

OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 756 48

SYSTEM FEDERATION NO. 91,
RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, ET AL., PETITIONERS.

vs.

O. V. WRIGHT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 3, 1960
CERTIORARI GRANTED APRIL 18, 1960

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 75648

SYSTEM FEDERATION NO. 91,
RAILWAY EMPLOYEES' DEPARTMENT,
AFL-CIO, ET AL., PETITIONERS,

vs.

O. V. WRIGHT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

INDEX

Original Print

Proceedings in the United States Court of Appeals for the Sixth Circuit		
Appendix to appellants' brief consisting of proceedings transpiring before the United States District Court for the Western District of Kentucky	1	1
Relevant docket entries	1	1
Excerpts from complaint	16	15
Judgment, decree and injunction	41	36
Motion to modify injunction	45	39
Motions of The Louisville & Nashville Railroad Company in response to the motion of certain defendant unions to modify the injunction	55	44
Order re motion to modify injunction	60	46
Response of certain plaintiffs to motion to modify Response of The Louisville & Nashville Railroad Company to the motion of certain defendants to modify the injunction	61	47
	66	51

Original Print

**Appendix to appellants' brief consisting of proceedings transpiring before the United States District Court for the Western District of Kentucky
—Continued**

Amended response of certain plaintiffs to motion to modify	74	56
Motion of N. L. Padgett, et al., to intervene	78	59
Intervening response of N. L. Padgett, et al.	80	61
Order	88	68
Memorandum, Shelbourne, J.	89	69
Order overruling motion to modify injunction	104	80
Appendix of appellees other than Louisville & Nashville Railroad Company consisting of additional proceedings transpiring before the United States District Court for the Western District of Kentucky		
Transcript of testimony, motion to modify the injunction of December 7, 1945	1	81
Appearances	1	81
Testimony of N. L. Padgett—		
direct	1	81
G. A. Baker—		
direct	6	85
Simon Durant—		
direct	10	88
Sam Jones—		
direct	15	92
N. L. Padgett—		
(recalled)—		
redirect	17	94
G. A. Baker—		
(recalled)—		
redirect	17	94
Sam Jones—		
(recalled)—		
redirect	18	95
Simon Durant—		
(recalled)—		
redirect	18	95

Original Print

Appendix of appellees other than Louisville & Nashville Railroad Company consisting of additional proceedings transpiring before the United States District Court for the Western District of Kentucky—Continued

Transcript of testimony, motion to modify the injunction of December 7, 1945—Continued

Testimony of E. E. Yates—

	direct	19	96
J. B. Quiggins—			
	direct	21	97
	cross	23	99
J. C. Laney—			
	direct	24	100
	cross	27	102
	redirect	28	103
Heywood Carter—			
	direct	29	104
James E. Jones—			
	direct	31	105
Herbert Poynter—			
	direct	33	107
Simon Vanderpool—			
	direct	34	108
E. V. Chappell—			
	direct	35	109
	cross	37	111
	redirect	39	112
	recross	39	113
	redirect	40	113
	recross	40	113
D. A. Lee—			
	direct	40	114
Stanley Ellis—			
	direct	44	117
Albert W. Washer—			
	direct	46	118
	cross	49	120
	redirect	51	122
H. A. Hargrave—			
	direct	52	123

Original Print

Appendix of appellees other than Louisville & Nashville Railroad Company consisting of additional proceedings transpiring before the United States District Court for the Western District of Kentucky—Continued

Transcript of testimony, motion to modify the injunction of December 7, 1945—Continued

Testimony of W. S. Scholl—

direct	55	126
cross	60	130
redirect	62	132

J. W. Ritter—

direct	62	132
cross	64	133

Harold Johnson—

direct	67	135
cross	69	137

Plaintiffs' Exhibit No. 1—Release

70	138
----	-----

Motion to re-open

77	144
----	-----

Exhibit "A"—Letter dated February 6, 1958

**from Brotherhood of Locomotive Firemen
and Enginemen to I. D. Britt, Lodge 937**

79	146
----	-----

Order sustaining motion to re-open

81	147
----	-----

Argument and submission of cause

83	149
----	-----

Judgment

84	149
----	-----

Opinion, Per curiam

85	150
----	-----

Clerk's certificate (omitted in printing)

88	152
----	-----

Order allowing certiorari

89	153
----	-----

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 13,768

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES
DEPARTMENT AFL-CIO, et al., Appellants,**

—v.—

O. V. WRIGHT, et al., Appellees.

Appendix to Appellants' Brief—Filed March 9, 1959

[File endorsement omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil No. 942

O. V. WRIGHT et al., Plaintiffs

—v.—

SYSTEM FEDERATION No. 91, RAILWAY EMPLOYEES
DEPARTMENT, etc., et al., Defendants

RELEVANT DOCKET ENTRIES

1945

- 7-16 Complaint filed at 4:30 P. M.
- 7-16 Summons issued and delivered U. S. Marshal
- 7-16 29 Summons issued to Eastern Dist., and mailed Mr. Eldred July 19-45
- 7-21 Summons returned executed: System Fed. No. 91, Railway Employees Dept. J. T. Powell, Pres. and J. Hugh Whelchel, Secretary, July 20, 1945; International Association Machinists, R. J. May, Gen. Chairman thru J. T. Powell, who accepted same July 20, 1945; International Brotherhood of Boilermakers, Iron Ship Builders & Helpers of America, & P. G. Williams, Gen. Chairman thru J. T. Powell, who accepted same July 20, 1945; Sheet Metal Workers International Association, J. Hugh Whelchel, Gen. Chairman, thru J. T. Powell, July 20, 1945; Brotherhood of Railway Carmen, J. T. Powell, Gen. Chm. July 20, 1945
- [fol. 2] 7-21 Summons executed on L & N Railroad, J. B. Hill, President
- 7-23 Summons executed on Pan American No. 576 Bro. Ry. Carmen, E. C. Sattich, Pres. Sillinger, Secy.

- Fox, Treas; Local 1004, Int. Bro. Firemen etc., Turner Dever, Pres.; Jno. W. Detig, Secy.-Treas.; Subordinate Lodge 102—Int. Bro. Boilermakers etc., Int. Bro. Electrical Workers; Local Union 1353—Int. Bro. Elec. Workers; Local 445—Sheetmetal Workers, International Association, et al.; Railroad Lodge 205—Int. Association of Machinists, etc.
- 7-25 Summons executed on Pan American 576—Bro. Ry. Carmen, W. O. Peteat, Dan'l Deweesee, N. A. Wilson, Ray Hall; International Bro. of Firemen, etc. Ray Abner, General Chairman.
- 7-25 Summons executed on International Bro. Electrical Workers, Walter Allen, Pres. Henry Hogan, V. P.; Subordinate Lodge 102—Int. Boilermakers etc. Brock, R. B. McMasters, D. C. Elder, J. D. Hall, J. M. Hermuth—H. A. Stromier.
- 7-26 Summons executed on Int. Ass'n. Machinists—C. C. Lee, N. E. McIntyre & Rufus Goodman, F. Berger; Local 445—Sheetmetal Workers etc. Wm. A. Schujahn & Fred Canada
- 8-8 Motion to dismiss filed by Attys. for L & N Railroad Company
- 8-8 Motion to dismiss filed by Attys. for Defendants except L & N
- 8-14 Summons executed on Local 1073 International Ass. of Machinists—M. F. Hodge—W. H. Sharpe and N. C. Jenkins; Loyd F. Johnson, Treas. No. 1073-TR Trosper Com Chr—Lesley Goodin and Rein Teague, Committeemen; Local 362 Int. Bro. of Fire-[fol. 3] men, et al, Edgar Hamblin, Indv. & Pres., Ed Noe, Vice P. and Garfield Carroll, Finc. Secty.; W. C. Stephens, Rec. Secy. Local 362—A. M. Jones, Treas. W. M. Harman, Com Chr—H. L. Disney, Committeeman—George Broughton by serving wife; W. R. Denny, Comm. Local 445—Stone Glass Treas. New Bridge Lodge 284—Thomas Blackwell, Pearl

- Miller and Ollie Richardson, Committeemen; New Bridge Lodge 284 et—H. P. Scrivner, Pres. and Individually—Pearl Miller, Vice Pres. and Floyd Neikirk, Secy.
- 8-23 L & N R. R. Cos. Memorandum of Authorities on Motion to Dismiss, filed
- 8-23 Memorandum of Authorities on Motion to Dismiss for all Defts. except L & N R R Co., filed
- 9-7 Memorandum of Authorities relied on by Plaintiff in opposition to Motion to dismiss all defendants except L & N Railroad
- 9-7 Memorandum of Authorities relied on by Plaintiffs in opposition to Motion to dismiss L & N Railroad
- 9-19 Order entered—hearing on motions of various Defendants to dismiss—Arguments—Case under consideration by Court
- 10-2 Order—Defendants Motions to dismiss and to require Plaintiffs to elect, overruled. Copies mailed Attys.
- 10-8 Call—Dec. 5 trial
- 10-16 Agreement extending time for filing Answer to Nov. 15, 1945
- 11-15 Agreed Order allowing Defendants to Nov. 21, 1945 to Answer
- 11-16 Answer of L & N Railroad Company filed
- 11-16 Notice of Taking of Depositions filed
- 11-26 Depositions for L & N Railroad
- [fol. 4] 11-21 Answer of all Defts other than L & N Railroad Co.
- 12-7 Judgment, Decree & Injunction entered. One half costs of this action to be paid by Defendant, Railroad and one-half by Defendant Unions
- 2-1 Petition (Intervening Petition) of John R. Cain filed

- 2-2 Order for issuance of Rule against B. C. Elder, Boiler Shop 3, South Louisville Shops, L & N, entered
- 2-4 Rule issued, returnable Feb. 18th at 10 A. M., for Contempt
- 2-4 Rule executed Feb. 4th on B. C. Elder. Harold Hall, D. M.
- 2-13 Motion of L & N Railroad for leave to file Amended Answer, Counterclaim and Cross-Claim filed
- 2-13 Amended Answer of L & N Railroad, Counterclaim against Plaintiffs and Cross-Claim against its Co-Defendants tendered
- 2-18 Hearing on Contempt Rule—Defendant present, R. E. Mogas, Counsel. John R. Cain present; Counsel, Marshall P. Eldred. Affirmative allegations on behalf of Deft Elder controverted of record. Motion of Elder to dismiss overruled. Exceptions. L & N represented by H. T. Lively and C. S. Landrum. Case taken under advisement by Judge Miller. As to L & N's Amended Counter-Claim etc. filed Feb. 13th it is ordered filed. Parties, other than L & N, given to Feb. 25th to file response and by agreement set for pre-trial Feb. 27 at 10 A. M. insofar as matters in said Amended Answer, etc.
- 2-25 Amended & Supplemental Answer of all Defendants other than L & N R.R. Co.; Counter-claim against Plaintiff; Answer to Cross-Claim of L & N and [fol. 5] Cross-Petition against L & N filed by Robt. S. Hogan, Atty.
- 2-25 Plaintiffs Reply to Answer and Counter-claim of L & N R.R. Co. filed by Mr. Marshall Eldred, Atty.
- 2-27 Findings of Fact & Conclusions of Law. W. S. Miller, Jr. Judge
- 2-27 Pre-trial Conference in Judge Shelbourne's office at 10 a.m.
- 2-27 Request of L & N for Admissions under Rule 36 filed

- 2-27 Order entered that Affirmative allegation of Plaintiffs Reply to Answer of L & N and affirmative allegations of Amended Answer of all except L & N etc. be controverted of record
- 3-7 Statement denying specifically certain matters filed for Defts other than L & N
- 3-8 Response to Request for Admissions filed by Plaintiffs.
- 3-11 Pre-trial April 4th 11 A. M.
- 3-16 Order signed by Judge Miller—admonished B. C. Elder, L & N R R & W. D. Nelson for violation of Injunction of Dec. 7, 1945; as supplemented by Agreement of Dec. 12, 1945, and that responses of said Defts to rule issued are insufficient; L & N and Nelson to pay costs
- 3-27 Amended & Supplemental Answer of all defendants other than L & N R R; Amended & Supplemental, Counterclaim against Plaintiffs; Amended & Supplemental Answer to cross-claim of L & N and Amended & Supplemental Cross-Petition against L & N R R Company filed
- 4-4 Ordered motion dismissed insofar as parties hereto seek a declaration of rights*
- [fol. 6] 4-4 Amendment to Amended Answer, Counterclaim of L & N R R filed
- 4-4 Motion for Summary Judgment filed for Defts except L & N R R
- 4-4 Motion to dismiss filed by Plaintiffs; Dismissed
- 11-15 Motion of C. Pierce Reed, to file Intervening Petition (Rule 24) filed
- 11-15 Intervening Petition of C. Pierce Reed, tendered
- 11-15 Objection filed by L & N Railroad
- 11-15 Objection of Defendants other than L & N and Wigington filed

- 11-15 Hearing on Motion Dec. 14th
- 12-5 Memo Brief of System Fed. No. 91 et al opposing the petition of C. Pierce Reed
- 12-16 Memo in Support of Defendant L & N Railroad's objection to filing of Intervening petition of C. Pierce Reed, filed—to Judge Shelbourne
- 12-18 Memo Brief of Intervening Petitioner on right to intervene. With record
- 12-19 Hearing on Motion to permit filing of Intervening Petition of Reed—Evidence—Arguments. Permission given to file the intervening petition
- 1947
- 5-8 Two hour conference in Judge-Shelbourne's office
- 5-12 Supplemental Memorandum in Support of Defendants (Louisville & Nashville)
- 5-12 Objection to filing of Intervening Petition of C. Pierce Reed, filed by L & N
- 5-28 Supplemental Memorandum, in Support of C. P. Reed's Motion to file Intervening Petition filed by Brown & Eldred for C. P. Reed
- 12-19 Order signed, re: hearing on C. Pierce Reed's Motion to file his intervening petition. Motion sustained. Intervening Petition ordered filed & Rule to issue returnable Jan. 21, 1948
- [fol. 7] 12-19 Rule issued accordingly
- 12-22 Rule returned executed on L & N R R. C. N. Wiggins, Assnt Gen. Master Mechanic L & N; C. J. Bodmer for Mr. Wiggins. System Federation 91, American Federation of Labor and International Association of Machinists
- 12-30 Rule returned executed Dec. 23 at Corbin, Ky., on M. A. Hodge, T. R. Trosper. U. S. Marshal fee \$5.40
- 1948
- 1-8 Separate Answer of L & N Railroad to Intervening Petition of Reed

- 1-16 Response of L & N R R to Rule filed
- 1-20 Response of C. W. Wiggins Jr. to Rule filed
- 2-9 Memo for Intervening Petitioner filed by Brown & Eldred, Attys.
- 7-16 Memorandum by Hon. Roy M. Shelbourne finding Defendants guilty of Contempt and fining them \$750.00, to be paid to Reed, Intervenor, and \$200.00 Attys fee to his Counsel
- 8-4 Transcript of Evidence filed
- 3-20 Heard Jan. 21, 1948, on Rule issued on Motion of C. P. Reed to show cause why Defendants should not be adjudged in Contempt of Court, for violating injunction issued on December 7, 1945. Respondent C. N. Wiggins, at conclusion of Intervenors evidence, moved to be discharged. Motion was sustained at the time, and ordered now discharged. Wiggins to recover his costs herein
- 8-20 Order adjudging other Respondents (L & N R R Co., System Federation No. 91 Employees' Dept. American Fed. of Labor; International Association of Machinists, Local No. 1073, and T. R. Trosper) guilty of Contempt of this Court for violation of in [fol. 8] junction of December 7, 1945, and to jointly pay to Intervening Petitioner, C. P. Reed, \$750.00 and to Brown & Eldred, Attorneys, \$200.00, and the costs of this proceeding.
- 8-30 Motion for new trial and for Judgment for defendant L & N R R
- 8-30 Brief of defendant L & N on its Motion for new trial
- 8-30 Motion and grounds for new trial and motion to Stay proceedings to enforce judgment, filed by Counsel for defendants other than L & N
- 9-29 Brief for Intervening Petitioner, C. Pierce Reed, in opposition to Motion for a new trial filed. To M. M. S. with record

- 10-22 Brief for Defts. other than Lou & Nashville R. R. Co. on their motion for a new trial and for Judgment in their favor

1949

- 2-2 Order entered overruling the motion for a new trial and for judgment in favor of respondent L & N Railroad and the motion of defendants, System Federation No. 91 Employees Department American Machinists and T. R. Trosper for new trial and to stay proceedings to enforce judgment entered Aug. 20, 1948

- 2-28 Notice of defendant, L & N of appeal to United States Court of Appeals

- 2-28 Notice of Appeal to United States Court of Appeals filed for Unions

- 2-28 Statement of Points relied on by L & N Railroad

- 2-28 Designation of Portions of Record to be contained in Record on Appeals

- 2-28 Notice of Appeal and Bond for L & N ordered filed. Bond \$1200

[fol. 9] 3-1 Record taken by Mr. Blythe; Westerfield-Bonte

- 3-15 Statement of Points and authorities on which Defendants other than L & N R R intend to rely filed by Robt. E. Hogan, Atty. who sent copy to Mr. Blythe

- 4-4 Supersedeas Bond, Affidavit of Surety H. A. Vittoe and Court Order

1950

- 4-25 Mandates and Opinion United States Court of Appeals in American Federation of Labor, et al vs. C. Pierce Reed and Brown & Eldred, Attys., and in L & N Railroad, appellant vs. C. Pierce Reed and Brown & Eldred, Attys. Appellees, received today and filed—Judgment of District Court affirmed

1957

- 7-2 Motion to modify Injunction filed by Robt. C. Hogan,
Atty. for Defendant—Notice of Hearing 7-16-57
at 9:30 a. m.
- 7-8 "Response to Notice to File Motion to Modify Injunction," filed by Attys for respondents (Marshal P. Eldred & Brown & Eldred)
- 7-9 "Motions of the Louisville and Nashville Railroad Company in Response to the Motion of Certain Defendant Unions to Modify the Injunction and Notice" filed by Attys for Defendant (John P. Sandidge and H. C. Breetz)
- 7-16 Order signed by Judge Shelbourne 7-16-57 that in addition to the Service of Notice on Marshal P. Eldred of the hearing of defendant's Motion to modify the injunction entered in this case on Dec. 7, 1945, Service of Notice should be made on all persons whose rights may be affected by any modification of the judgment etc. previously entered in this case; case continued on said Motion to Sep. 19, [fol. 10] 1957, at 9:30 A. M., CDST or such other date as the Court may hereafter fix; all persons whose rights may be affected thereby to be given notice of the hearing by mail at least 20 days prior to the date set for said hearing—Copies handed Attys of record by Miss Lyon 7-16-57 F. Allen
- 9-6 Order of Judge Shelbourne that motion to modify the injunction will not be heard on Sept. 19—that action be continued till further order of Court. Copies to Richard Lyman, Lester P. Schoene, Chas. S. Landrum, Marshall Eldred, H. C. Breetz, Robt. Hogan & John Sandidge
- 11-26 Order of Judge Shelbourne setting Court trial for 1-7-58; Copies to Attys of Record
- 12-17 4 Subpoenas issued in blank to Atty for Plff.—E. S. Bonnie

- 12-20 "Notice to take Deposition" of Ray Abner on Friday, Dec. 27, 1957, at 10:00 a. m. and J. Hugh Whelchel, Friday, Dec. 27, 1957 at 2:00 p. m. at 420 S. 5th St., Louisville, Ky., for purpose of discovery, etc., filed by Atty. for Plffs. (Marshall P. Eldred)
- 12-20 Subpoenas to Take Depositions issued to Ray Abner and J. Hugh Whelchel
- 12-21 Response of certain Plaintiffs to Motion to Modify filed by Marshall P. Eldred, Atty. for Walter E. Lee, Marion A. Holman, E. D. Walters, Sherman Napier & V. L. Crutcher
- 12-24 Motion to continue hearing set for 1-7-58 and grant Plaintiffs and classes represented by them additional time filed by Marshall P. Eldred—noticed for Friday Dec. 27 at 2 p. m.
- 12-24 Deposition subpoena as to J. Hugh Whelchel returned executed by U. S. Marshal—Deposition sub-[fol. 11] poena as to Ray Abner returned executed by U. S. Marshal
- 12-27 Response of L & N R R Co., to the Motion of Certain Defendants to Modify the Injunction filed by Woodward, Nobson & Fulton (John P. Sandidge)
- 12-27 Certificate that true copy of attached notice was served upon Plffs., filed by Robt. E. Hogan, Counsel for dfds
- 12-27 Certificate that true copy of within Notice was served upon Plffs., employes of L & N etc. filed by Robt. E. Hogan, Counsel for dfds.
- 12-27 Affidavit of Martha Emery filed—before Notary Robt. E. Hogan filed
- 12-27 Affidavit of J. Hugh Welchel filed—before Notary Robt. E. Hogan
- 12-27 Affidavit of Barbara Hieatt, re: addressing envelopes, filed before Notary, Robt. E. Hogan
- 12-27 Order of Court signed by Judge Shelbourne granting additional time to Jan. 20, 1958, in which re-

sponses or objections to System Federation No. 91's motion to modify the injunction might be filed and sets this case for hearing on said motion on Mon. Feb. 3, 1958, at 9:30 a. m. Cpus to Richard Lyman, Lester P. Schoene, Chas. Landrum, Marshal Eldred, H. G. Breetz, Robt. E. Hogan, John Sandidge

1958

- 1-20 Amended Response of Certain Plaintiffs to Motion to Modify filed by Marshall P. Eldred, Atty for plaintiffs—Motion to Intervene filed by Marshal P. Eldred, Atty. for Movants—Hearing 2-3-58 9:30 a. m.—Intervening Response of N. L. Padgett et al., filed by Marshall P. Eldred
- 1-27 Praecept for Subpoena for W. S. Schell & John [fol. 12] O. Sullivan filed by Edward S. Bonnie—Subpoenas issued and delivered to Bonnie
- 1-31 Following SP's returned executed:- All for plffs—W. H. Sims, Harold Johnson, N. A. Hargrove, Stanley Ellis, D. A. Lee, John O. Sullivan, J. W. Ritter, Albert W. Washer, W. S. Scholl (duces tecum) E. E. Yates
- 2-3 Depositions taken by Plaintiff 12-27-57 filed by Yoder & Commons 1—Ray Abner 2—J. Hugh Whelchel
- 2-4 Order signed by Judge Shelbourne dated 2-4-58 this action coming on for trial to the Court, there appeared, Marshall P. Eldred, for certain Plffs; Robt. E. Hogan, Richard R. Lyman and Milton Kraemer, for the dfdt and Jno. P. Sandidge and H. C. Breetz for L & N R. R. Co. Mr. Eldred moved the Court to rule on his motion to intervene; the case was stated for dfdt; evidence for plff. was introduced and concluded; Counsel asked for time to file briefs; simultaneous briefs to be filed within 3 weeks, counsel is allowed 10 days after service of cpys of briefs by adversary counsel, for filing reply briefs. When briefs are filed said action to be submitted. Cpus to Attys of record

- 2-24 Brief of moving Defs. System Federation No 21, etc., et al, in support of Motion to modify Injunction filed by Robt. E. Hogan with certificate of service of Brief
- 2-24 Motion & Brief for plffs and intervenors in opposition to motion of def to modify filed by Marshall P. Eldred
- 2-24 Brief on behalf of L & N R. R. Co.—filed by John P. Sandidge
- 2-26 Objection to Motion of Plaintiffs and Intervenors filed by Robt. E. Hogan
- [fol. 13] 2-26 Transcript of Testimony Motion to Modify the Injunction of Dec. 7, 1945, filed by Helen Whedon, Court Reporter with Plaintiffs Exhibits 1-6
- 3-6 Reply Brief of moving Defendants filed by Richard R. Lyman
- 3-7 Reply Brief for Plaintiffs filed by Marshall P. Eldred
- 3-8 Reply Brief on Behalf of L & N R R Co filed by Woodward, Hobson & Fulton
- 4-18 Memorandum on Behalf of L & N R R Co. (unsigned) received from Judge Shelbourne and filed
- 4-18 Order signed by Judge Shelbourne dated 4-18-58 sustaining motion of plffs & intervenors and permitting introduction of certain evidence sustained, etc., objection on part dfdts noted; Dfdts directed to serve written notice on certain international unions and local unions (names and addresses set out in order) of the Pending of Motion to Modify injunction heretofore issued in this case on Dec. 7, 1945; that in lieu of serving notice, counsel for moving dfdts may obtain and file herein the written entries of appearance of said International Unions and said local unions joining in said mo. to modify. Copies to Marshal P. Eldred, John P. Sandidge, Lester P. Schoene, Richard R. Lyman, Robert E. Hogan 4-18-58 AL

- 5-22 "Notice of Appearances" requesting copy of all papers in this action be served on them at their respective offices namely Richard R. Lyman, 741 Nat'l Bank Bldg., Toledo 4, Ohio—Lester P. Schoene, 1625 K Street, N.W. Washington 6, D. C. Robert E. Hogan, 1906 Ky. Home Life Bldg., Louisville, 2, Ky. for the following named defendants: System Federation No. 91 (see notice for unions listed under) Railroad Lodge No. 205 (Louisville, Ky.) [fol. 14] International Assn. of Machinists—Lodge No. 1072 (Corbin, Ky.) Inter. Assn. of Machinists (Believe should be 1073)—Subordinate Lodge No. 102 (Lou. Ky.) Brotherhood Railway Carmen of Am.—New Bridge Lodge No. 284 (Ravenna, Ky.) Brotherhood RW Carmen of Am.—Local No. 445 (Ravenna, Ky.) Sheet Metal Workers Inter. Assn.—Local No. 1004 (Lou. Ky.) Inter. Brotherhood of Firemen, Oilers, etc.—Local No. 362 (Corbin, Ky. Int. Bro. of Firemen, Oilers, etc.—Local Union No. 1353 (Lou. Ky.) Brotherhood of Electrical Workers etc.
- 5-22 "Entry of Appearance" waiving notice of all proceedings herein consenting to the granting of Motion to modify the decree of injunction heretofore entered under date of Dec. 7, 1945; designating Richard R. Lyman, Lester P. Schoene, Robert E. Hogan, Counsel associated with them to enter its appearance as its Attys of record, together with certificate of service for each of above named defendants, filed by Robert E. Hogan
- 5-22 "Entry of Appearances" of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (successor organization to original defendant, International Brotherhood of Boilermakers, Iron Ship Builders & Helpers of America) waiving notice of proceedings herein, entering its appearance generally, for all purposes, consenting to granting of Motion to Modify decree of injunction heretofore entered on Dec.

- 7, 1945, together with certificate of service, filed by counsel for said defendant, Robert E. Hogan
- 5-28 Brief on Behalf of L & N R R Co. concerning questions asked in argument filed by Woodward, Hobson & Fulton
- 5-31 Substitute Page 4 of Brief on behalf of L & N R R [fol. 15] Co., together with letter asking that same be substituted for original page 4 thereof, received from Woodward, Hobson & Fulton and filed
- 6-13 Memorandum on Behalf of Plaintiffs & Intervenors Relative to Questions Arising during argument filed by Marshall P. Eldred
- 7-14 Reply Memorandum filed by Mulholland, Robie & Hickey (Richard R. Lyman)
- 8-7 Memorandum filed by Judge Shelbourne—that motion to modify is overruled and an order so providing will be tendered by Atty. for plaintiffs—Copies to Marshall P. Eldred, Robt. E. Hogan, Mulholland, Robie & Hickey, Schoene & Kramer & Woodward Hobson & Fulton
- 8-9 Order tendered by Marshall P. Eldred
- 8-22 Order signed by Judge Shelbourne 8-22-58 that motion of the ddfds unions to modify the injunctive phase of the "Judgment, Decree and Injunction" is overruled—Cpys to Robt. Hogan, Mulholland, Robie, Hickey, Schoene & Kramer, Woodward, Hobson & Fulton & H. G. Breetz
- 9-16 Notice of Appeal of all defendants except L & N R R Co. filed by Robert E. Hogan, Atty for Appellants; copy of Notice of Appeal mailed to Marshall P. Eldred
- 9-18 Appeal Bond in sum of \$250.00 (The Home Indemnity Co. Surety) filed by Robt. E. Hogan, Atty for all defendants except L & N R R Co.
- 10-16 Order of court (Judge Shelbourne) dated Oct. 16, 1958, extending time for filing record on appeal

and docketing in U. S. Court of Appeals for 6th Circuit to and including Dec. 12, 1958, (Copies mailed to Richard R. Lyman, Robt. E. Hogan, Lester P. Schoene, John P. Sandidge, Marshal P. Eldred and H. B. Breetz)

[fol. 16]

IN UNITED STATES DISTRICT COURT

EXCERPTS FROM COMPLAINT—Filed July 16, 1945

For the purposes of this appeal the following portions of the Complaint constitute a fair specimen of the allegations of the entire complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
No. 942

O. V. Wright, Walter E. Lee, Charles C. Teague, J. W. Watkins, Sherman Napier, Will White, Carl W. Bowman, H. B. Simmons, Chester H. Wallace, C. P. Jacobs, E. L. Crutcher, Marion A. Holeman, Ollie Keeling, Joe Hibbard, J. A. McDowell, Delbert W. Cloyd, C. D. Walters, Elvin Norman, W. A. Billingsley, H. F. Starr, W. W. Barnes, L. B. Hines, Malcolm M. Couch, Alf [fol. 17] Lockheart, W. D. Ratliff, C. E. Lake, James L. Williams, J. R. Graham, Plaintiffs,

vs.

System Federation No. 91, Railway Employees' Department, American Federation of Labor,
J. T. Powell, President, System Federation No. 91
J. Hugh Whelchel, Secretary, System Federation No. 91

International Association of Machinists,
R. J. May, General Chairman of International Association of Machinists

International Brotherhood of Boilermakers,
Iron Ship Builders and Helpers of America,

P. G. Williams, General Chairman of International
Brotherhood of Boilermakers, Iron Ship Builders and
Helpers of America

Sheetmetal Workers International Association,

J. Hugh Whelchel, General Chairman of Sheetmetal
Workers International Association

Brotherhood Railway Carmen of America,

J. T. Powell, General Chairman of
Brotherhood Railway Carmen of America

International Brotherhood of Electrical Workers,

T. H. Patterson, General Chairman of International
Brotherhood of Electrical Workers

[fol. 18] International Brotherhood of Firemen, Oilers,
Helpers, Roundhouse and Railway Shop Laborers,

Ray Abner, General Chairman of International
Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers

Railroad Lodge No. 205,

International Association of Machinists,

C. A. Babb, President

C. M. Tydings, Secretary

K. Heidel, Treasurer

O. C. Lee, Committee Chairman

H. E. McIntyre, Committeeman

Rufus Goodman, Committeeman

Frank Berger, Committeeman

Local No. 1073,

International Association of Machinists,

M. F. Hodge, President

W. M. Sharpe, Vice President

N. C. Jenkins, Secretary

Loyd F. Johnson, Treasurer

T. R. Trosper, Committee Chairman

Lesley Gooden, Committeeman

Rein Teague, Committeeman

Subordinate Lodge No. 102,
International Brotherhood of Boilermakers,
Iron Ship Builders and Helpers of America,

W. W. Adams, President
James C. Lovelace, Vice President
Russell L. Preston, Secretary
J. C. Brock, Treasurer
R. B. McMasters, Committee Chairman
J. C. Brock, Committeeman
H. A. Stromier, Committeeman
[fol. 19] B. C. Elder, Committeeman
J. D. Hall, Committeeman
J. M. Wermuth, Committeeman

Pan American No. 576,
Brotherhood Railway Carmen of America

E. C. Sattich, President
John J. Sillinger, Secretary
Herman H. Fox, Treasurer
W. O. Poteet, Committee Chairman
Daniel DeWeese, Committeeman
W. A. Wilson, Committeeman
Ray Hall, Cominitteeman

New Bridge Lodge No. 284,
Brotherhood Railway Carmen of America,

H. P. Scrivner, President
Pearl Miller, Vice President
Floyd Neikirk, Secretary
Stone Glass, Treasurer
Thomas Blackwell, Committee Chairman
Pearl Miller, Committeeman
Ollie Richardson, Committeeman

Local No. 445,
Sheetmetal Workers International Association,
William T. Sils, President
Claude McKinnis, Vice President
William A. Schujahn, Secretary
M. Fred Canada, Treasurer
W. R. Denny, Committeeman

Local No. 1004,
 International Brotherhood of Firemen, Oilers,
 Helpers, Roundhouse and Railway Shop Laborers,

Turner Dever, President

John W. Detig, Secretary, Treasurer

G. F. Hutchinson, Committee Chairman

[fol. 20] Local No. 362,

International Brotherhood of Firemen, Oilers,
 Helpers, Roundhouse and Railway Shop Laborers,

Edgar Hamblin, President

Ed. Noe, Vice President

Garfield Carroll, Financial Secretary

W. C. Stephens, Recording Secretary

A. M. Jones, Treasurer

W. M. Harman, Committee Chairman

H. L. Disney, Committeeman

George Broughton, Committeeman

Local Union No. 1353,

International Brotherhood of Electrical Workers,

T. H. Patterson, President

H. B. Cherry, Vice President

F. C. Doutrick, Treasurer

J. F. Schietinger, Recording Secretary

C. H. Fortenberry, Committee Chairman

Richard McDaniel, Committeeman

Louisville & Nashville Railroad Company, Defendants.

This action arises under the Act of Congress of June 21, 1934, 48 Stat. 1185, 45 U.S.C.A., ch. 8, being an act to regulate interstate commerce; 28 U.S.C.A., sec. 41(8); Federal Rule of Procedure, Rule 57, 28 U.S.C.A., sec. 723; 28 U.S.C.A., sec. 400.

The plaintiffs hereinabove named joined in this action against the defendants hereinabove named because their several causes of action arise out of the same series of transactions or occurrences, and questions of law and [fol. 21] facts common to all of the plaintiffs and all of the defendants will arise in this action.

Count I

1.1 The plaintiff, O. V. Wright, states that he resides at 4103 Southern Parkway, Louisville, Kentucky, and is employed as a boiler inspector by the Louisville & Nashville Railroad Co. in its South Louisville Roundhouse; that he has been employed by said company for 35 years, the last 17 years of which he has performed his duties as a boiler inspector, without complaint as to the manner of performing his work from either his employer or the labor organization representing his craft; and that he is a member of the boilermakers craft or class of employees.

1.2 The defendant, System Federation No. 91, Railway Employees' Department, American Federation of Labor (hereinafter called the Federation), is an unincorporated association or labor union, all of whose members are employees of the Louisville & Nashville Railroad Co. and are likewise members of one or the other of the following labor unions, each of which is an international unincorporated association whose members are employed by the Louisville & Nashville Railroad Co. and other interstate railroads, and each of which is composed of various local lodges or units located at various points upon the Louisville & Nashville Railroad Co. and other interstate railroads, each of which local lodges or units is an unincorporated association whose members are employees of the Louisville & Nashville Railroad Co. or of the particular railroad upon which said local is located, said labor unions operating through the Federation being the following: International Association of Machinists (hereinafter called the Machinists Union), International Brotherhood of Boil[fol. 22]ermakers, Iron Ship Builders and Helpers of America (hereinafter called the Boilermakers Union), Sheetmetal Workers International Association (hereinafter called the Sheetmetal Workers Union), Brotherhood Railway Carmen of America (hereinafter called the Carmen Union), International Brotherhood of Electrical Workers (hereinafter called the Electricians Union), and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers (hereinafter called the

Firemen & Oilers Union). The principal office and place of business of the Federation is located in Louisville, Kentucky, and the president and secretary of the Federation are respectively J. T. Powell and J. Hugh Whelchel, both residents of Louisville, Kentucky. The members of the Federation are so numerous as to make it impracticable to bring them all before the Court. The defendants, J. T. Powell and J. Hugh Whelchel are representative of all the members of the Federation whose interests in this case will be adequately represented by said defendants. Said defendants are sued herein individually, as officers of the Federation and as representatives of its entire membership.

1.3 The defendant, Subordinate Lodge No. 102 is a subordinate lodge or local unit of the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, and is located in Louisville, Kentucky. The defendants, W. W. Adams, James C. Lovelace, Russell L. Preston and J. C. Brock are respectively the president, vice-president, secretary and treasurer of Subordinate Lodge No. 102, and are all residents of Louisville, Kentucky. The defendants, R. B. McMasters, as chairman, and J. C. Brock, B. C. Elder, J. D. Hall, J. M. Wermuth and H. A. Stromier comprise the committee of said local, and all are residents of Louisville, Kentucky. The members of the International Brotherhood of Boilermakers, [fol. 23] Iron Ship Builders and Helpers of America and of Subordinate Lodge No. 102, are so numerous as to make it impracticable to bring them all before the Court. The defendants, W. W. Adams, James C. Lovelace, Russell L. Preston, J. C. Brock, R. B. McMasters, B. C. Elder, J. D. Hall, J. M. Wermuth and H. A. Stromier, are representative of all the members of Subordinate Lodge No. 102 and of the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, whose interests in this case will be adequately represented by said defendants. Said defendants are sued herein individually, as officers of said local and as representatives of the entire membership of said local and the International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America.

1.4 The defendant, Louisville & Nashville Railroad Co. (hereinafter called 'the Railroad'), is a Kentucky corporation with its chief office and place of business in Louisville, Kentucky.

1.5 Since August of 1940, and under the provisions of the Railway Labor Act, the defendant Boilermakers Union, operating through and by the defendant Federation, has been and is now the exclusive bargaining agent and representative of the entire craft or class of the employees of the defendant Railroad employed as boilermakers and in related capacities, and as such, was and is now under a duty to represent all the members of said craft or class, regardless of whether they are members of defendant Boilermakers Union, fairly, impartially and in good faith, and to refrain from making against the minority members of the craft (who are not members of the defendant Boilermakers Union) hostile discriminations not based on relevant differences. Notwithstanding their duties under the Railway Labor Act, the defendants Federation, Boiler-[fol. 24] makers Union and all of its locals have consistently violated the purpose, terms and provisions of said act by practicing against the minority members of the boilermakers craft, who were and are not members of said labor organizations, acts of hostile discrimination for the purpose of giving preference to members of the craft who are members of said organizations, and for no other reason, as hereinafter more fully appears. Said defendants have further violated said act in that they have consistently pursued toward the minority members of the boilermakers craft, who are not members of said labor organizations, a policy calculated to limit the freedom of association among said employees, force them into joining their labor organizations and put into effect upon the defendant Railroad a virtual closed shop.

1.6 Under the terms and provision of Railway Labor Act and at all times material herein, the defendant Railroad was and is now under a duty to treat fairly and impartially all of its employees according to their seniority rights and ability and in keeping with working agreements

regularly adopted by the defendant Railroad and the duly elected bargaining representatives of its employees. Said act imposes on defendant Railroad a duty to refrain from making hostile discriminations against any of its employees because of their refusal to become or to remain a member of any certain labor organization. Notwithstanding its duties under the Railway Labor Act, the defendant Railroad has consistently violated the purpose, terms and provisions of said act by practicing against the minority members of the boilermakers craft, who were and are not members of the defendants Federation, Boilermakers Union and its locals, acts of hostile discrimination and by giving preference to its employees who are members of said labor organization, as hereinafter more fully appears. [fol. 25] The defendant Railroad has further violated said act in that it has consistently pursued toward its employees who are not members of the defendants Federation, Boilermakers Union and its locals a policy calculated to limit the freedom of association among said employees and to influence or coerce said employees in an effort to induce them to join or remain members of the defendants Federation, Boilermakers Union and its locals.

1.7 The defendants Federation, Boilermakers Union, all of its locals and the defendant Railroad have severally and jointly, by concurring each with the other, violated their duties under the Railway Labor Act in that they have, with respect to employees in the boilermakers craft who were not members of said labor organizations, denied said employees the right to bid on vacancies, the right to promotion to higher jobs or preferred jobs, the right to work overtime at punitive rate of pay and other rights as more fully appears hereinafter.

1.8 Prior to February 4, 1945, plaintiff, O. V. Wright, under an individual contract of employment with the defendant Railroad, was working on a job that was assigned to him on a 7-day basis, that is to say, he was working seven days a week at straight time. At all times material herein said plaintiff was not and is not now a member of defendant Boilermakers Union or any of its locals. With-

out notice to him, an agreement was entered into between defendant Railroad and defendants Federation and Boilermakers Union whereby all 7-day assigned jobs were abolished on said Railroad as of February 4, 1945, from and after which date all Sunday and holiday work was to be classified as overtime work and paid for at the rate of time and one-half. Under an agreement then and still remaining in effect between said defendants, the effective [fol. 26] date of which was September 1, 1943, overtime must be distributed as equally as possible among employees as far as the character of work permits and a record must be kept of overtime worked in order to distribute the overtime as equally as possible. It was provided further that an overtime call list should be drawn by mutual agreement between the officer in charge (representing the management) and the committee (representing the union).

1.9 For a period of approximately three years, plaintiff, O. V. Wright, has been denied his proportionate share of overtime work which, since February 4, 1945, includes work to be performed on Sundays and holidays, in violation of the agreement referred to above, for the sole reason that he is not a member of and refuses to join defendants Boilermakers Union and Subordinate Lodge No. 102, notwithstanding he has been able, qualified and willing to work overtime; that such denial is the loss of a valuable property right, and that unless this Honorable Court grants him relief, he will not be permitted to work overtime and receive time and one-half pay as compensation therefor and will suffer irreparable damage. This plaintiff already has been damaged by reason of the foregoing in the amount of at least \$5000.00.

1.10 Plaintiff, O. V. Wright, has complained of the foregoing discrimination to defendant Railroad and to defendant Subordinate Lodge No. 102, and has requested the handling of his grievance by the committee of said local, but without obtaining any results or relief or the overtime work to which he is entitled. The plaintiff, O. V. Wright, does not have available to him an adequate administrative remedy and unless this Honorable Court will hear

and determine this cause and grant the relief hereinafter prayed, this plaintiff will be unable to obtain relief from [fol. 27] the acts of hostile discrimination practiced against him and will continue to suffer irreparable injury.

1.11 Plaintiff, O. V. Wright, brings this action in his individual right and for his own benefit and likewise sue herein on behalf of the class he represents, namely all employees of the craft of boilermakers employed by the defendant Railroad who are not members of the defendants Federation, Boilermakers Union or any subordinate lodge thereof and whose rights and privileges as employees of defendant Railroad have been denied, taken away, or abridged by the defendants Federation, Boilermakers Union or any subordinate lodge thereof, and by the defendant Railroad by separate acts of discrimination or by acts of discrimination done in concert with one or more of the other defendants, and for the sole reason that said employees did not join or retain their membership in said labor organization. Said employees are so numerous as to make it impracticable to bring them all before the court. This plaintiff is fairly representative of said employees and their interests in this case will be adequately represented by this plaintiff. The rights of said employees and of this plaintiff are several, but said rights are affected by a common question of law and a common question of fact, and common relief is sought for all.

1.12 In this case an actual controversy exists between this plaintiff and the class he represents on the one hand and the defendants Federation, Boilermakers Union and Subordinate Lodge No. 102 and the class represented by them, and the defendant Railroad on the other hand. The interests of this plaintiff and the class he represents are adverse to the interests of said defendants and those they represent; said plaintiffs have already suffered irreparable injury and will suffer further irreparable injuries [fol. 28] unless this Honorable Court grants the relief hereinafter prayed and will declare the rights, interests and other legal relations of the respective parties as provided

in 28 U.S.C.A., see, 400 and Rule 57 of the Federal Rules of Civil Procedure.

Count VIII

8.1 The plaintiff, H. B. Simmons, stated that he resides at Buechel, Kentucky, and is employed as a machinist by defendant Railroad at its South Louisville round-house; that he had been employed by said Company for twenty-five years without complaint as to the manner of performing his work from either his employer or the labor organization representing his craft; that he is a member of the machinist craft or class of employees.

8.2 This plaintiff, by reference, hereby adopts all the allegations of paragraph 1.2 of *Count I.*

8.3 The defendant, R. J. May, is General Chairman of the International Association of Machinists, and is a resident of Louisville, Kentucky. The defendant Railroad Lodge No. 205 is a subordinate lodge or local unit of the International Association of Machinists and is located in Louisville, Kentucky. The defendants C. A. Babb, C. M. Tydings, K. Heidel are respectively the President, Secretary and Treasurer of Railroad Lodge No. 205, and are all residents of Louisville, Kentucky. The defendants O. C. Lee, as Chairman, and H. E. McIntyre, Rufus Goodman, and Frank Berger comprise the committee of Railroad Lodge No. 205 and all are residents of Louisville, Kentucky. The members of the International Association of Machinists and of Railroad Lodge No. 205 are so numerous as to make it impracticable to bring them all before the court. The defendants R. J. May, C. A. Babb, [fol. 29] C. M. Tydings, K. Heidel, O. C. Lee, H. E. McIntyre, Rufus Goodman and Frank Berger are representative of all the members of the International Association of Machinists and Railroad Lodge No. 205, whose interests in this case will be adequately represented by said defendants. Said defendants are sued herein individually, as officers of said unions, and as representatives of the entire membership thereof.

8.4 This plaintiff, by reference, hereby adopts all the allegations of paragraph 1.4 of *Count I.*

8.5 Since August of 1940, and under the provisions of the Railway Labor Act, the defendant Machinists Union, operating through and by the defendant Federation, has been and is now the exclusive bargaining agent and representative of the entire craft or class of the employees of the defendant Railroad employed as machinists and in related capacities, and as such, was and is now under a duty to represent all the members of said craft or class, regardless of whether they are members of defendant Machinists Union, fairly, impartially and in good faith, and to refrain from making against the minority members of the craft (who are not members of the defendant Machinists Union) hostile discriminations not based on relevant differences. Notwithstanding their duties under the Railway Labor Act, the defendants Federation, Machinists Union and all of its locals have consistently violated the purpose, terms and provisions of said act by practicing against the minority members of the machinists craft, who were and are not members of said labor organizations, acts of hostile discrimination for the purpose of giving preference to members of the craft who are members of said organizations, and for no other reason, as hereinafter more fully appears. Said defendants have [fol. 30] further violated said act in that they have consistently pursued toward the minority members of the machinists craft, who are not members of said labor organizations, a policy calculated to limit the freedom of association among said employees, force them into joining their labor organization and put into effect upon the defendant Railroad a virtual closed shop.

8.6 Under the terms and provisions of Railway Labor Act and at all times material herein, the defendant Railroad was and is now under a duty to treat fairly and impartially all of its employees according to their seniority rights and ability and in keeping with working agreements regularly adopted by the defendant Railroad and the duly elected bargaining representatives of its employ-

ees. Said act imposes on defendant Railroad a duty to refrain from making hostile discriminations against any of its employees because of their refusal to become or to remain a member of any certain labor organization. Notwithstanding its duties under the Railway Labor Act, the defendant Railroad has consistently violated the purpose, terms and provisions of said act by practicing against the minority members of the machinists craft, who were and are not members of the defendants Federation, Machinists Union and its locals, acts of hostile discrimination and by giving preference to its employees who are members of said labor organizations, as hereinafter more fully appears. The defendant Railroad has further violated said act in that it has consistently pursued toward its employees who are not members of the defendants Federation, Machinists Union and its locals a policy calculated to limit the freedom of association among said employees and to influence or coerce said employees in an effort to induce them to join or remain members of the defendants, Federation, Machinists Union and its locals.

[fol. 31] 8.7 The defendants Federation, Machinists Union, all of its locals and the defendant Railroad have severally and jointly, by concurring each with the others, violated their duties under the Railway Labor Act in that they have, with respect to employees in the machinists craft who were not members of said labor organizations, denied said employees the right to bid on vacancies, the right to promotion to higher jobs or preferred jobs, the right to work overtime at punitive rate of pay and other rights as more fully appears hereinafter.

8.8 At all times material herein, the plaintiff, H. B. Simmoms, was not and is not now a member of defendant Machinists Union or any of its locals. Since the defendant Machinists Union, acting through and by the defendant Federation, became the exclusive bargaining agent and representative of the Machinists craft of defendant Railroad in the year 1940, this plaintiff has been denied the right of promotion to the job of lead-man in connection with his work as an air-brake inspector, notwithstanding

the fact that this plaintiff has been, and is now able, qualified; and willing to work as a lead-man, which job pays 10¢ an hour higher rate of compensation than that paid to this plaintiff as an air-brake inspector, for the sole and only reason that this plaintiff refuses to join the defendants Machinists Union and Railroad Lodge No. 205.

8.9 Since the year 1940, plaintiff, H. B. Simmons, has been denied his proportionate share of overtime work, contrary to the provisions of an agreement affecting his craft, and entered into between defendant Railroad and defendants Federation and Machinists Union, the effective date of which was September 1, 1943, under the terms of which overtime must be distributed as equally as possible among employees as far as the character of the work permits and [fol. 32] a record must be kept of overtime work in order to distribute same as equally as possible. Said agreement further provides that an overtime call list should be drawn by mutual agreement between the officer in charge (representing the management) and the committee (representing the union). This plaintiff has been denied his proportionate share of overtime work, notwithstanding the fact that he has been able, qualified, and willing to perform such work. Such denial is the loss to this plaintiff of a valuable property right and unless this Honorable Court grants him relief, he will not be permitted to receive his proportionate share of overtime work and time and one-half pay as compensation therefor, and will suffer irreparable damage. This plaintiff has already been damaged by reason of the foregoing, and the matters alleged in paragraph 8.8 above, in the amount of at least Five Thousand Dollars (\$5,000.00).

8.10 The plaintiff, H. B. Simmons, does not have available to him an adequate administrative remedy, and unless this Honorable Court will hear and determine this cause, and grant the relief hereinafter prayed, this plaintiff will be unable to obtain relief from the acts of hostile discrimination practiced against him, and will continue to suffer irreparable injury.

8.11 Plaintiff, H. B. Simmons, brings this action in his individual right and for his own benefit and likewise sues herein on behalf of the class he represents, namely all employees of the craft of machinists employed by the defendant Railroad who are not members of the defendants Machinists Union or any subordinate lodge thereof and whose rights and privileges as employees of defendant Railroad have been denied, taken away, or abridged by the defendants Federation, Machinists Union or any sub-[fol. 33] ordinate lodge thereof, and the defendant Railroad by separate acts of discrimination or by acts of discrimination done in concert with one or more of the other defendants, and for the sole reason that said employees did not join or retain their membership in said labor organization. Said employees are so numerous as to make it impracticable to bring them all before the court. This plaintiff is fairly representative of said employees and their interests in this case will be adequately represented by this plaintiff. The rights of said employees and of this plaintiff are several, but said rights are affected by a common question of law and a common question of fact, and common relief is sought for all.

8.12 In this case an actual controversy exists between this plaintiff and the class he represents on the one hand and the defendants Federation, Machinists Union and Railroad Lodge No. 205 and the class represented by them, and by the defendant Railroad on the other hand. The interests of this plaintiff and the class he represents are adverse to the interests of said defendants and those they represent, said plaintiffs have already suffered irreparable injury and will suffer further irreparable injuries unless this Honorable Court grants the relief hereinafter prayed and will declare the rights, interest and other legal relations of the respective parties as provided in 28 U.S.C.A., Sec. 400 and Rule 57 of the Federal Rules of Civil Procedure.

• • • • •

Count XIV

14.1 The plaintiff, Joe Hibbard, states that he resides at Otas, Kentucky, and he is employed as a machinist's helper by defendant Railroad in its shops at Corbin, Kentucky, that he has been employed in said capacity for nine [fol. 34] years without complaint as to the manner of performing his work from either his employer or the labor organization representing his craft; that he is a member of the machinist craft or class of employees.

14.2 This plaintiff, by reference, hereby adopts all the allegations of paragraph 1.2 of *Count I.*

14.3 The defendant, R. J. May, is General Chairman of the International Association of Machinists and is a resident of Louisville, Kentucky. The defendant, Local No. 1073, is a subordinate lodge or local unit of the International Association of Machinists and is located in Corbin, Kentucky. The defendants, M. F. Hodge, W. M. Sharpe, N. C. Jenkins, Loyd F. Johnson are respectively the President, Vice-President, Secretary and Treasurer of Local No. 1073, and all are residents of Corbin, Kentucky. The defendants, T. R. Trosper as chairman, and Lesley Gooden and Rein Teague comprise the committee of Local No. 1073 and all are residents of Corbin, Kentucky. The members of the International Association of Machinists and of Local No. 1073 are so numerous as to make it impracticable to bring them all before the court. The defendants, R. J. May, M. F. Hodge, W. M. Sharpe, N. C. Jenkins, Loyd F. Johnson, T. R. Trosper, Lesley Gooden and Rein Teague are representative of all members of the International Association of Machinists and of Local No. 1073, whose interests in this case will be adequately represented by said defendants. Said defendants are sued herein individually, as officers of said unions, and as representatives of the entire membership thereof.

14.4 This plaintiff, by reference, hereby adopts all the allegations of paragraph 1.4 of *Count I.*

[fol. 35] 14.5 This plaintiff, by reference, hereby adopts all the allegations of paragraph 8.5 of *Count VIII.*

14.6 This plaintiff, by reference, hereby adopts all the allegations of paragraph 8.6 of *Count VIII.*

14.7 This plaintiff, by reference, hereby adopts all the allegations of paragraph 8.7 of *Count VIII.*

14.8 Since August of 1940, defendant Machinists Union, acting by and through the defendant Federation, has been the exclusive bargaining agent and representative of the machinist craft of defendant Railroad. At all times material herein this plaintiff has not been and is not now a member of defendant Machinists Union or any of its locals. Since defendant Machinists Union became the exclusive bargaining agent and representative for the machinist craft of employees of defendant Railroad, this plaintiff was upgraded in his department so that he was receiving for his work top rate of pay, to wit, \$1.0572 per hour, which is the compensation of upgraded helpers. Helpers' pay was .7932 per hour. At all times he was and is now able, qualified and willing to perform top grade work. Notwithstanding this, however, this plaintiff was taken off of top grade work and reduced to his former job at its regular rate of pay, for the sole and only reason that he was not a member of, and refused to join defendant Local No. 1073. Following this plaintiff's demotion, other helpers in his department who were junior in point of service to this plaintiff, were upgraded to perform said work, not because they were any better qualified to perform said work than this plaintiff, but because they were and are members of defendant Local No. 1073. Such denial to this plaintiff of the right of promotion to top grade work in his department is a loss to him of a valuable property right, resulting to him in irreparable injury.

[fol. 36] 14.9 Since the year 1940, plaintiff, Joe Hibbard, has been denied his proportionate share of overtime work, contrary to the provisions of an agreement affecting his craft, and entered into between defendant Railroad and de-

fendants, Federation and Machinists Union, and more fully alleged in paragraph 8.9 of *Count VIII*. This plaintiff has been denied his proportionate share of overtime work, notwithstanding the fact that he has been able, qualified and willing to perform same. Such denial is the loss to him of a valuable property right and unless this Honorable Court grants him relief, he will not be permitted to receive his proportionate share of overtime work, and compensation therefor at the rate of time and one-half and will suffer irreparable damage. This plaintiff has already been damaged by reason of the foregoing and the matters alleged in paragraph 14.8 above in the amount of at least Five Thousand Dollars (\$5,000.00).

14.10 The plaintiff, Joe Hibbard, does not have available to him an adequate administrative remedy, and unless this Honorable Court will hear and determine this cause, and grant the relief hereinafter prayed, this plaintiff will be unable to obtain relief from the acts of hostile discrimination practiced against him, and will continue to suffer irreparable injury.

14.11 This plaintiff, by reference, hereby adopts all the allegations of paragraph 8.11 of *Count VIII*, substituting his name for that of the plaintiff, H. B. Simmons.

14.12 This plaintiff, by reference, hereby adopts all the allegations of paragraph 8.12 of *Count VIII*.

WHEREFORE, all the plaintiffs hereinabove named pray as follows:

[fol. 37] 1. For a declaratory judgment binding on all the parties hereto and their privies, settling and declaring the rights, interests and legal relations of the respective parties in and to and by reason of the matters hereinabove detailed.

2. For a declaratory judgment decreeing and declaring that the defendants Federation, Boilermakers Union, Machinists Union, Carmen Union, Sheetmetal Workers

Union, Electricians Union and Firemen and Oilers Union, and all of their subordinate lodges and locals situated upon, or having any jurisdiction over any employees of, the defendant Railroad, in accepting the position of and acting as the exclusive bargaining agents and representatives under the Railway Labor Act of the crafts or classes of boilermakers, machinists, carmen, sheetmetal workers, electricians, stationary firemen and oilers, roundhouse and railway shop laborers, employed by defendant Railroad, assumed and are under the obligation and duty to represent fairly, impartially and without discrimination, all of the members of said crafts or classes who are not members of defendant labor organizations, and to recommend to defendant Railroad indiscriminately all of said employees for promotion, for leave of absence, for protection of seniority, for overtime work and for all other rights or benefits of an individual contract of employment with defendant Railroad, which recommendations shall be in keeping with the regularly adopted working agreements between defendant Railroad and the duly elected bargaining agents of the several crafts, but without regard to whether said employees or any of them join or retain their membership in any of said defendant labor organizations or in any labor organization.

3. For a declaratory judgment decreeing and declar[fol. 38] ing that the plaintiffs and all other minority members employed by defendant Railroad in the boilermakers, machinists, carmen, sheetmetal workers, electricians, and stationary firemen, oilers, roundhouse and railway shop laborers crafts or classes who are not members of defendants Federation, Boilermakers Union, Machinists Union, Carmen Union, Sheetmetal Workers Union, Electricians Union, and Firemen and Oilers Union, or any subordinate lodge or local thereof, are entitled to promotion to preferred jobs or to jobs in a higher classification paying a higher rate of pay, to proper protection of their seniority, to bid on vacancies, to leaves of absence with proper protection of seniority, and to receive their proportionate share of overtime work and compensation therefor, based upon their ability, seniority, and willingness to perform their

duties, irrespective of and without regard to whether said employees join or retain their membership in any of said defendant labor organizations or in any labor organization.

4. For a declaratory judgment decreeing and declaring that the defendant Railroad, under the Railway Labor Act, is under a duty and obligation to treat fairly, impartially and without discrimination all of its employees and to assure to all of its employees the right to bid on vacancies, to leaves of absence with proper protection of seniority, to promotion to preferred jobs or jobs in a higher classification with a higher rate of pay, to proper protection of their seniority and to their proportionate share of overtime work and compensation therefor and to receive the benefits of said rights based upon ability, seniority, and willingness to perform such work, irrespective of and without regard to whether said employees, or any of them, are members of any of defendant labor organizations or of any labor organization.

[fol. 39] 5. For a preliminary and permanent injunction against the defendants Federation, Boilermakers Union, Machinists Union, Carmen Union, Sheetmetal Workers Union, Electricians Union, and Firemen and Oilers Union, all of their officers, agents, and members, and all of their subordinate lodges or locals situated upon or having any jurisdiction over any employees of the defendant Railroad, and their officers, agents, and members, and against the defendant Railroad, perpetually restraining and enjoining them, and each of them, from requiring as a condition to receiving promotion, leaves of absence, protection of seniority, overtime work and any and all rights or benefits which may arise out of an individual contract of employment between defendant Railroad and any one of its employees, that plaintiffs and the classes represented by them or any one of them, join or retain their membership in any of said defendant labor organizations or any labor organization; perpetually restraining and enjoining them, and each of them, from denying to the plaintiffs and the classes represented by them or any one of them, promotion to a

preferred job or to a job in a higher classification with a higher rate of pay, leaves of absence, protection of seniority, overtime work, or any rights or benefits arising from an individual contract of employment between defendant Railroad and any one of its employees, for the sole and only reason that they or any one of them are not members of or refuse to retain their membership in any one of said defendant labor organizations or any labor organization; and perpetually restraining and enjoining them; and each of them, from failing to recommend for or to award to the plaintiffs and the classes represented by them or any of them promotion to preferred jobs or jobs in a higher classification with a higher rate of pay, leaves of absence, proper protection of seniority, overtime work or any other right or benefit arising out of any individual [fol. 40] contract of employment between defendant Railroad and any one of its employees, for the sole and only reason that said employees refuse to join or retain their membership in any one of said defendant labor organizations or any labor organization.

6. For a judgment awarding each of the plaintiffs judgment against all of the defendants, jointly and severally, in the amount of \$5,000.00.

7. For a judgment for their costs herein expended and for all other proper, lawful and equitable relief to which they may be entitled.

Attorneys for Plaintiff.

602 Kentucky Home Life Bldg.,
Louisville, Ky.

[fol. 41]

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE
No. 942**

O. V. WRIGHT, et al., Plaintiffs,

vs.

**SYSTEM FEDERATION NO. 91, EMPLOYEES' DEPARTMENT,
AMERICAN FEDERATION OF LABOR, et al.; Defendants.**

**JUDGMENT, DECREE AND INJUNCTION—Entered
December 7, 1945**

By consent and agreement of all parties to this action, it is ordered, adjudged and decreed as follows:

That the defendants, other than the defendant Railroad, and all of the subordinate lodges and locals of the defendant Unions, acting as the duly designated and authorized representatives of any employes of defendant Railroad, are, in accordance with the provisions of the Railway Labor Act and in accordance with the duly adopted bargaining agreements between the defendant Railroad and defendant Unions, under the obligation and duty to represent and treat fairly and impartially, and without discrimination based on membership or non-membership in any labor organization, all members of the crafts or classes of boilermakers, machinists, carmen, sheet metal workers, electricians, power house employes and railway [fol. 42] shop laborers, including the plaintiffs to this action, without regard to whether said employes, or any of them, are members of or join or retain their membership in any of said defendant labor organizations, or in any labor organization;

That the defendant Railroad, in accordance with the provisions of the Railway Labor Act and in accordance with the duly adopted bargaining agreements between the said Railroad and the defendant Unions, is under the duty

and obligation to refrain from discrimination against its employes in the crafts or classes of boilermakers, machinists, carmen, sheet metal workers, electricians, power house employees and railway shop laborers, including the plaintiffs to this action, because of or by reason of the failure or refusal of said employes to join or retain their membership in any of defendant labor organizations, or in any labor organization;

That the plaintiffs in this action and all other employes of the defendant Railroad employed in the boilermakers, machinists, carmen, sheet metal workers, electricians, power house employees and railway shop laborers crafts or classes, who are not members of the defendant labor organizations, or any subordinate lodge or local thereof, shall from and after the date hereof and in accordance with the collective bargaining agreements, be entitled, irrespective and without regard to whether said employes, or any of them, are members of or join or retain their membership in any of said defendant labor organizations, or in any labor organization, to the rights of promotion to preferred jobs, to jobs in a higher classification paying a higher rate of pay, to proper protection of seniority, to bid on or be assigned to vacancies, to leaves of absence with proper protection of seniority and to their [fol. 43] proper share of overtime work and compensation therefor, as provided for in such agreements now in effect or that may hereafter be in effect in accordance with the Railway Labor Act;

That all of the defendants, and all of the subordinate lodges and locals of the defendant Unions acting as the duly designated and authorized representatives of any employes of defendant Railroad, their officers, agents employes and members, and the defendant Railroad, be and they are hereby enjoined from requiring that the plaintiffs and the classes represented by them in this action join or retain their membership in any of said defendant labor organizations, or any labor organization, as a condition to receiving promotion, leaves of absence, proper protection of seniority, overtime work and any other rights or benefits which may arise out of or be in accordance with the

regularly adopted bargaining agreements in effect between the defendant Railroad and the defendant Unions, or that may hereafter be in effect between the defendant Railroad and the defendant Unions in accordance with the Railway Labor Act; and are enjoined from denying to said plaintiffs, or the classes represented by them in this action, promotion to such preferred jobs, jobs in a higher classification with a higher rate of pay, leaves of absence, proper protection of seniority, overtime work or any other right or benefit arising out of or in accordance with the regularly adopted bargaining agreements in effect between the defendant Railroad and the defendant Unions, or that may hereafter be in effect between the defendant Railroad and the defendant Unions in accordance with the provisions of the Railway Labor Act, for the sole and only reason that the plaintiffs or the classes represented by them in this action are not members of or refuse to join or to retain their membership in any of said defendant labor organizations, or any labor organizations; and they are further [fol. 44] enjoined, in the application of the provisions of the regularly adopted bargaining agreements in effect between the defendant Railroad and the defendant Unions, or that may be hereafter in effect between the defendant Railroad and the defendant Unions in accordance with the provisions of the Railway Labor Act, from discriminating against the plaintiffs and the classes represented by them in this action by reason of or on account of the refusal of said employes to join or retain their membership in any of defendant labor organizations, or any labor organization;

That one-half the costs of this action be paid by defendant Railroad and the other half thereof be paid by the defendant Unions.

The Court retains control of this action for the purpose of entering such further orders as may be deemed necessary or proper.

Approved: Dec. 7, 1945

Shackelford Miller, Jr., Judge United States District Court, Western District of Kentucky.

Brown and Eldred, Attorneys for Plaintiffs.

Woodward Dawson Hobson & Fulton, Attorneys for Defendant Railroad.

Mulholland, Robie & McEwen, and Robert E. Hogan, Attorneys for all defendants other than Defendant Railroad.

A Copy—Certified.

W. T. Beckham, Clerk, By M. H. Hogan, Deputy Clerk.

[fol. 45]

IN UNITED STATES DISTRICT COURT

MOTION TO MODIFY INJUNCTION—Filed July 2, 1957

Now come the defendants' System Federation No. 91, Railway Employes' Department, A.F.L.-C.I.O. (formerly known as System Federation No. 91, Railway Employes' Department, American Federation of Labor), International Association of Machinists, Sheet Metal Workers' International Association, Brotherhood Railway Carmen of America, International Brotherhood of Electrical Workers, and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, and move the Court, pursuant to Rule 60 (b) of the Federal Rules of Civil Procedure, to modify its decree of injunction hereinbefore entered, under date of December 7, 1945, against these and other defendants, by adding to and incorporating therein a proviso to the effect that it shall not operate to prohibit defendants, or any of them from negotiating, entering into, or applying and enforcing, any agreement or agreements authorized by Section 2, Eleventh of the Railway Labor Act, as amended January 10, 1951.

As grounds for said motion these defendants state as follows:

1. The complaint herein, which resulted in the consent decree of injunction of December 7, 1945, was based on alleged acts of discrimination against non-members of the defendant labor organizations, in the matter of their promotion, seniority, overtime, leave of absence and other

rights under the collective bargaining agreements applicable to the involved crafts or classes of defendant Railroad's employees, because of their failure or unwillingness to join or retain their membership in the defendant labor organizations.

[fol. 46] 2. At the time of institution of this action, and entry of the decree of injunction, the Railway Labor Act (45 U.S.C., Sec. 151 et seq.) and particularly Section 2, Fourth and Fifth thereof, made it unlawful for carriers to interfere in any way with the organization of their employees, or to coerce or compel their employees to join or remain or not to join or remain members of any labor organization, and such prohibitions were generally construed as creating an "open shop" in the railroad industry, and making unlawful closed shop, union shop or other forms of union security agreements.

3. By Act of January 10th, 1951 (64 Stat. 1238; 45 U.S.C. 152, Eleventh) the Congress of the United States amended the Railway Labor Act to permit, within defined limits, the making of union security agreements by carriers subject to the Act, said amendment reading as follows:

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, That no such agreement shall require such condition of employment with respect to employees

to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing² the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: Provided, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the [fol. 48] First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organiza-

tion other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended."

The lawfulness of union security agreements negotiated pursuant to such amendment has been upheld in *Railway Employes' Department, A.F.L. v. Hanson*, 351 U.S. 225 (May 21, 1956).

[fol. 49] 4. These defendants, and other labor organizations representing different crafts and classes of defendant Railroad's employees, are currently seeking to negotiate and place into effect, with respect to the employees of defendant Railroad represented by them under said Railway Labor Act, an agreement or agreements requiring the employees so represented, as a condition of their continued employment, to become and remain members of the organizations representing their respective crafts, subject to all of the limitations and conditions prescribed in the above-quoted Section 2, Eleventh, of said Act as amended; but defendant Railroad has refused to negotiate for such an agreement or agreements with these defendants and with the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and

Helpers, successor organization to the original defendant International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, for the asserted reason that it fears that to do so would subject it and such defendant labor organizations to charges of contempt for violation of said decree of injunction of December 7, 1945.

5: Said 1951 amendment to the Railway Labor Act terminated, to the extent specified therein, plaintiffs' right to be free from the requirements of union security agreements, and it is no longer equitable that said decree of injunction should have prospective application to prohibit defendants from negotiating such agreements pursuant to express Congressional authorization.

Wherefore, these defendants pray the Court, upon hearing of the aforesaid motion, to enter an order sustaining it and modifying said permanent injunction of December 7, 1945, so that it shall have no prospective application to prohibit defendants, or any of them, from negotiating, entering into, or applying and enforcing, any agreement or agreements authorized by Section 2, Eleventh, of the Railway Labor Act, as amended January 10, 1951.

Robert E. Hogan, Kentucky Home Life Building,
Louisville, Kentucky; Clarence M. Mulholland, 741
National Bank Building, Toledo 4, Ohio; Richard
R. Lyman, 741 National Bank Building, Toledo 4,
Ohio; Attorneys for defendants System Federation
No. 91, Railway Employes' Department,
A.F.L.-C.I.O., International Association of Machinists,
Sheet Metal Workers' International Association,
Brotherhood Railway Carmen of America;
International Brotherhood of Electrical Workers,
and International Brotherhood of Firemen,
Oilers, Helpers, Roundhouse and Railway
Shop Laborers.

[fol. 55]

IN UNITED STATES DISTRICT COURT

**MOTIONS OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY
IN RESPONSE TO THE MOTION OF CERTAIN DEFENDANT
UNIONS TO MODIFY THE INJUNCTION—Filed July 9, 1957**

I. Comes the Louisville & Nashville Railroad Company and for its response to the motion of the defendants, System Federation No. 91, Railway Employees' Department, [fol. 56] A.F.L.-C.I.O. (formerly known as System Federation No. 91, Railway Employees' Department, American Federation of Labor), International Association of Machinists, Sheet Metal Workers' International Association, Brotherhood Railway Carmen of America, International Brotherhood of Electrical Workers, and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers (hereinafter known as defendant Unions), states as follows:

(a) The Louisville & Nashville Railroad Company *objects to the motion to modify* the decree of injunction because the defendant Unions *have failed to follow the provisions concerning class actions as set forth in Rule 23*, and the Louisville & Nashville Railroad Company moves the Court pursuant to Rule 23 (c), Federal Rules of Civil Procedure, that the defendant Unions *be required in such manner as the Court directs to give notice to all the classes and crafts represented by the plaintiffs herein in such manner as the Court may direct* of the proposed modification of the judgment for the *following reasons*:

(1) The Louisville & Nashville Railroad Company states that in the original action there were twenty-eight named plaintiffs employed by the Railroad in the various states in which it operates as shown by the Complaint who prosecuted same in behalf of themselves and all other employees of this defendant similarly situated employed in the boilermaker, machinist, carmen, sheet metal workers, electricians, power house employees and railway shop laborers' crafts or classes in the states where the Railroad operates; that this action was assigned and prepared for trial, and there

was a consent judgment, decree, and injunction entered herein defining the duties of the moving defendant Unions, the International Brotherhood of Boilermakers, Iron Ship [fol. 57] Builders and Helpers of America, and this defendant and the rights of the named plaintiffs and all other employees of this defendant employed in said crafts and classes who were not members of any of the said labor organizations.

(2) The Louisville & Nashville Railroad Company says that thirteen of the said named plaintiffs, to wit: O. V. Wright, Chas. C. Teague, Will White, H. B. Simmons, Ollie Keeling, Joe Hibbard, *J. A. McDowell*, W. A. Billingsley, W. W. Barnes, Malcom M. Couch, W. D. Ratliff, *J. R. Graham* and H. F. Starr, *are not now employed by this defendant in its service*. The Railroad further states on information and belief that *others of the twenty-eight named plaintiff have joined one or more of the defendant Unions and do not now represent the non-union employees*.

(3) The Railroad further says on information and belief that approximately 2500 of its employees in said crafts and classes involved in this litigation do not belong to any of said labor organizations, *and that each of said 2500 employees have rights adjudged to them by said judgment, decree and injunction* in accordance with the judgments of this Court and the opinion of the United States Court of Appeals for the Sixth Circuit in the case of System Federation No. 91 v. Reed, 180 F. 2d 991, decided March 13, 1950.

(4) In addition to the named plaintiffs and those who have intervened in the action for the purpose of holding the Railroad and defendant Unions in contempt, namely *C. P. Reed and J. P. Crain*, the Railroad has been faced with many claims from other employees of the classes and crafts involved that the injunction has been violated to their detriment and damage by the Railroad and the de- [fol. 58] fendant Unions. From time to time these claims have been adjusted by the Railroad without the necessity of Court action. These parties are interested parties whose rights have been adjudicated in and protected by this decree, and *whose rights concerning their jobs and employ-*

ments will be affected to their detriment by the motions here made to modify this decree. The individual members of the classes and crafts involved herein have the protection of this judgment and should be notified by notice before any action is taken adversely affecting their rights under the judgment in order that they may intervene in this action if they so desire for their own protection.

II. Comes the Louisville & Nashville Railroad Company and moves the Court for time to file its response to the motion to modify the judgment at a date after the defendant Unions have given the necessary notice to the individual members of the classes and crafts involved in the manner required by this Court.

John P. Sandidge, Woodward, Hobson & Fulton, 1805 Kentucky Home Life Bldg., Louisville 2, Kentucky, JUniper 5-3321, Attorney for Defendant, Louisville & Nashville Railroad Company.

H. G. Breetz, 908 West Broadway, Louisville, Kentucky, JUniper 5-1121, Attorney for Defendant, Louisville & Nashville Railroad Company.

[fol. 60]

IN UNITED STATES DISTRICT COURT

ORDER RE MOTION TO MODIFY INJUNCTION—July 16, 1957

On this the 16th day of July, 1957, this case came on for a hearing on defendant's motion to modify the injunction entered in this case on December 7, 1945. There appeared Marshall P. Eldred, attorney of record for the plaintiffs who appeared specially pro se; John P. Sandidge and H. G. Breetz for the defendant, L & N Railroad Company; and Richard R. Lyman, Robert E. Hogan, and Lester P. Shoene for the moving parties defendant in this motion.

After hearing arguments of counsel, and the Court being sufficiently advised, It Is Ordered that in addition to the service of notice of the hearing of this motion on Marshall P. Eldred, originally appearing as counsel for plaintiffs in this action, service of notice should be made on all persons whose rights may be affected by any modification of the

judgment, decree, and injunction previously entered in this action; and the Court, in the exercise of its discretion, hereby continues this case on said motion to modify the injunction previously entered in this action to the 19th day of September, 1957, at 9:30 A. M., Central Daylight Saving Time, or such other date as the Court may hereafter fix, at which time hearing on said motion to modify said injunction is to be held; Provided, however, that all persons whose rights may be affected thereby shall have been given notice of the hearing by mail at least twenty (20) days prior to the date set for said hearing.

Roy M. Shelbourne, Judge, United States District Court.

July 16, 1957

[fol. 61]

IN UNITED STATES DISTRICT COURT

**RESPONSE OF CERTAIN PLAINTIFFS TO MOTION TO MODIFY—
Filed December 21, 1957**

Walter E. Lee, Marion A. Holman, E. D. Walters, Sherman Napier and V. L. Crutcher state that they are five of the original plaintiffs who filed the above styled action and for whom, and for the classes represented by them, the Judgment, Decree and Injunction of the Court was entered in the above matter on December 7, 1945. For their response, and that of the classes represented by them, to the motion of certain union defendants heretofore filed in the above case seeking to modify the injunction granted by this Court on the date aforesaid, they state as follows:

(1) The moving defendant unions have not been duly designated or authorized to represent these plaintiffs (nor any of the classes which they represent in this action, to wit: all nonunion employees of the defendant, Louisville & Nashville Railroad Company, employed in the machinists, carmen, sheet metal workers, electricians, boilermakers and firemen, oilers, helpers and laborers crafts or classes) with respect to negotiating with the defendant railroad for a union shop agreement; nor do said unions have any authority on behalf of any employee of defendant railroad

to negotiate for or demand a union shop for the Louisville & Nashville Railroad. At the time said unions were designated by the employees of the defendant railroad as their bargaining representatives under the provisions of the Railway Labor Act, no union shop was authorized or permitted by said act, and therefore said employees of defendant railroad knew that their bargaining representatives had no authority to negotiate for or demand a union shop upon said railroad, nor did said employees contemplate or be expected to foresee that said bargaining representatives [fol. 62] would in the future have such authority, and therefore said employees did not authorize their bargaining representatives to negotiate for or demand a union shop upon said railroad within the meaning of the provisions of section 2 Eleventh of the Railway Labor Act. Inasmuch as said moving defendant unions have not been authorized by the employees of the defendant railroad to negotiate for or demand a union shop upon said railroad, they have no authority to move this Court for a modification of the Judgment, Decree and Injunction entered in this action on December 7, 1945, for the avowed purpose of permitting them to negotiate for and demand a union shop:

Railway Labor Act, 45 U.S.C.A., Sections 151, et seq.
Graham et al. v. Southern Railway Co., 74 Fed. Supp. 663.

(2) In the complaint originally filed in the above styled action there were 28 plaintiffs, all of whom were nonunion employees of the defendant railroad. For the acts of discrimination alleged by said plaintiffs to have been practiced against them by the defendants in said action, said plaintiffs sought against the defendants recovery of monetary damages in the amount of \$5,000 each, or a total of \$140,000. The decree entered in this case on December 7, 1945, was a consent decree, agreed to by all the parties to this action. In agreeing to said decree the plaintiffs gave up their right to assert and prove damages claimed in the amount of \$140,000 in a compromise settlement in which all of said plaintiffs were paid a total of \$5,000, one-half by the defendant railroad and one-half by the defendant unions, in consideration of the declaration of [fol. 63] rights set out in said decree and the permanent injunction granted by said decree. In other words, the

agreement provided for a declaration of rights and a permanent injunction, in return for which the plaintiffs signed a waiver and release of all claims for damages against the defendants for the alleged wrongful acts done prior to the date of the release. In agreeing to the consent decree the plaintiffs gave up rights which they had and changed their position in the lawsuit then pending. The defendants benefitted from the consent decree by having a claim for \$140,000 settled for \$5,000. It is now impossible to restore the parties to the position they occupied prior to the entry of the consent decree and prior to the execution of the release by the plaintiffs. It would therefore be inequitable to modify in any degree or in any respect the injunction which is part of the consent decree for the reason that the plaintiffs cannot be restored the rights which they then gave up in consideration of the consent decree.

United States v. Swift & Co., 286 U.S. 106, 76 Law Ed. 999.

United States v. Radio Corporation of America, 46 Fed. Supp. 654.

(3) Since the entry of the consent decree referred to above there has not been a change in the factual situation surrounding the parties and the employment of plaintiffs and the classes represented by them to warrant or justify a modification of the injunction which is part of the consent decree. The only change in the situation from that existing at the time of the entry of the consent decree is a change of law, to-wit: the amendment to the Railway Labor Act now known as section 2 Eleventh. Such change [fol. 64] in the Railway Labor Act is neither directory nor mandatory, but permissive only, and does not form the basis for a modification of the injunction which constitutes part of the consent decree. A unilateral desire on the part of unions to have a union shop upon the Louisville & Nashville Railroad is not sufficient grounds for modification of the consent decree.

United States v. Swift & Co., 286 U.S. 106, 76 Law Ed. 999.

Ford Motor Co. v. United States of America, 335 U.S. 303, 93 Law Ed. 24 (1948).

(4) The consent decree entered in this case has not been turned into an instrument of wrong or oppression and therefore is not subject to modification.

United States v. Swift & Co., 286 U.S. 106, 76 Law Ed. 999.

(5) A modification of the consent decree entered in this case would make it possible for the union defendants, through economic pressure of strikes, to compel the institution of a union shop upon the Louisville & Nashville Railroad and would thus compel all employees of said railroad to join and retain their membership in a labor union in order to obtain and maintain rights and benefits of employment upon said railroad; would thus set at naught the purpose for which this action was filed and the protection secured to the nonunion employees of said railroad through the entry of the consent decree. Furthermore, the effect would be a reversal of the judgment heretofore entered in this case by the agreement of parties, and the subsequent negotiations between the defendant unions and the defendant railroad on the issue of a union shop would be tantamount to a retrial of the original issues in this case.

(6) The nonunion employees of the defendant railroad, numbering several thousands, are opposed to the modification to any extent of the Judgment, Decree and Injunction entered in this case on December 7, 1945.

Wherefore, said plaintiffs pray that the motion of the defendant unions to modify the Judgment, Decree and Injunction be denied.

Marshall P. Eldred, 420 S. Fifth St., Louisville 2, Ky., Attorney for Plaintiffs, Walter E. Lee, Marion A. Holman, E. D. Walters, Sherman Napier and V. L. Crutcher.

Of Counsel: Brown, Eldred and Tachau.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 66]

IN UNITED STATES DISTRICT COURT

**RESPONSE OF THE LOUISVILLE & NASHVILLE RAILROAD COMPANY
TO THE MOTION OF CERTAIN DEFENDANTS TO MODIFY THE
INJUNCTION—Filed December 27, 1957**

Comes the Louisville & Nashville Railroad Company and for its response to the motion of certain Union defendants heretofore filed in the above case, seeking to modify the injunction granted by this Court on December 7, 1945, states as follows:

1. The defendant, Louisville & Nashville Railroad Company, objects to the motion to modify the injunction on the ground that the motion to modify has not been served on all of the actual parties to this action as required by Rule 5, Federal Rules of Civil Procedure. The Record does not reflect that any notice of this motion or the motion has been served on the following original parties to the action:
 - International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Successor Organization to the original defendant, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America)

[fol. 67] Railroad Lodge No. 205 (Louisville, Ky.)

International Association of Machinists

C. A. Babb, President

C. M. Tydings, Secretary

K. Heidel, Treasurer

O. C. Lee, Committee Chairman

H. E. McIntyre, Committeeman

Rufus Goodman, Committeeman

Frank Berger, Committeeman

Local No: 1073 (Corbin, Ky.)

International Association of Machinists,

M. F. Hodge, President

W. M. Sharpe, Vice President

N. C. Jenkins, Secretary

Loyd F. Johnson, Treasurer

T. R. Trosper, Committee Chairman
Lesley Gooden, Committeeman
Rein Teague, Committeeman

Subordinate Lodge No. 102 (Louisville, Ky.)
International Brotherhood of Boilermakers,
Iron Ship Builders and Helpers of America,
W. W. Adams, President
James C. Lovelace, Vice President
Russell L. Preston, Secretary
J. C. Brock, Treasurer
R. B. McMasters, Committee Chairman
J. C. Brock, Committeeman
H. A. Stromier, Committeeman
B. C. Elder, Committeeman
J. D. Hall, Committeeman
J. M. Wernmuth, Committeeman

[fol. 68] Pan American No. 576 (Louisville, Ky.)
Brotherhood Railway Carmen of America

E. C. Sattich, President
John J. Sillinger, Secretary
Herman H. Fox, Treasurer
W. O. Poteet, Committee Chairman
Daniel DeWeese, Committeeman
W. A. Wilson, Committeeman
Ray Hall, Committeeman

New Bridge Lodge No. 284 (Ravenna, Ky.)

Brotherhood Railway Carmen of America,
H. P. Scrivner, President
Pearl Miller, Vice President
Floyd Neikirk, Secretary
Stone Glass, Treasurer
Thomas Blackwell, Committee Chairman
Pearl Miller, Committeeman
Ollie Richardson, Committeeman

Local No. 445 (Ravenna, Ky.)

Sheetmetal Workers International Association
William T. Sils, President
Claude McKinnis, Vice President

William A. Schujahn, Secretary

M. Fred Canada, Treasurer

W. R. Denny, Committeeman

Local No. 1004 (Louisville, Ky.)

International Brotherhood of Firemen, Oilers,
Helpers, Roundhouse and Railway Shop Laborers

Turner Dever, President

John W. Detig, Secretary, Treasurer

G. F. Hutchinson, Committee Chairman

[fol. 69] Local No. 362 (Corbin, Ky.)

International Brotherhood of Firemen, Oilers,
Helpers, Roundhouse and Railway Shop Laborers

Edgar Hamblin, President

Ed. Noe, Vice President

Garfield Carroll, Financial Secretary

W. C. Stephens, Recording Secretary

A. M. Jones, Treasurer

W. M. Harman, Committee Chairman

H. L. Disney, Committeeman

George Broughton, Committeeman

Local Union No. 1353 (Louisville, Ky.)

International Brotherhood of Electrical Workers

T. H. Patterson, President

H. B. Cherry, Vice President

F. C. Doutrick, Treasurer

J. F. Schietinger, Recording Seeretary

C. H. Fortenberry, Committee Chairman

Richard McDaniel, Committeeman

The defendants enumerated are concerned with the injunction and its terms, and the Record does not reflect that they are represented in any way by any of the attorneys in this action to modify the injunction.

2. The moving defendant Unions have not been duly designated or authorized to represent the Union or non-Union employees of the Louisville & Nashville Railroad Company employed as machinists, carmen, sheet metal workers, electricians, boilermakers, firemen, oilers, helpers and labor crafts or classes with respect to negotiating with

the Railroad for a Union Shop Contract. The moving defendant Unions do not have any authority on behalf of any employee of the Louisville & Nashville Railroad Company [fol. 70] to negotiate for or demand a Union Shop for the Louisville & Nashyille Railroad Company's operations. The moving Unions were designated by the employees of the Louisville & Nashville Railroad Company as their bargaining representatives under the provisions of the Railway Labor Act while said Act explicitly provides that no Union Shop was authorized or permitted by said Act. At the time of the designation of the Unions the employees of the Railroad knew that their bargaining representative had no authority to negotiate for or demand a Union Shop because said Union Shop was in violation of the Act, nor did said employees contemplate or foresee that said bargaining representative would in the future have such authority. Thus, said employees have not authorized their bargaining representatives to negotiate for or demand a Union Shop upon said Railroad within the meaning of the provisions of Section 2, Eleventh, of the Railway Labor Act. (45 U.S.C.A. 152 (Eleventh)). Since the moving Unions have not been authorized by the employees of the Louisville & Nashville Railroad Company to negotiate for or demand a Union Shop upon said Railroad, said Unions are without authority to move this Court for a modification of the judgment, injunction and decree entered in this action on December 7, 1945, for the avowed purpose of permitting them to negotiate for and demand a Union Shop.

3. The Louisville & Nashville Railroad Company objects to the motion to modify because it is contrary to the provisions of each individual's contract of employment between the Railroad and its employees in the classes and crafts involved. Section 2, Eighth (45 U.S.C.A. 152 (Eighth)) provides that notices shall be posted by the carrier setting forth the third, fourth and fifth paragraphs of Section 2 (45 U.S.C.A. 152 (Third, Fourth and Fifth)). [fol. 71] The provisions of these paragraphs are required by Section Eighth to be "made a part of the contract of employment between the carrier and each employee, and shall

be held binding upon the parties, regardless of any other express, or implied agreements between them." Section 2, Third (45 U.S.C.A. 152 (Third)) provides as follows:

Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

The modification of this injunction in accordance with the motion of the moving Unions will require the Railroad to interfere with, influence and coerce employees in the choice of their representative in violation of the provisions of their individual contracts with the employees and in violation of the provisions of Section 2, Third (45 U.S.C.A. 152 (Third)) of the Railway Labor Act.

4. The Louisville & Nashville Railroad Company does not agree to the modification of the injunction as proposed by the moving Unions because there is no change in the factual situation surrounding the parties and the employment of the plaintiffs and the classes represented by them. The factual situation requires the continuance of the injunction because efforts are constantly made by [fol. 72] the moving Unions to require the Railroad to discriminate against the non-Union employees. The only change in the situation from that existing at the time of the entry of the consent decree is the change of law as stated in the amendment to the Railway Labor Act in Section 2, Eleventh (45 U.S.C.A. 152 (Eleventh)). The change as to a Union Shop is permissive only, is neither directory nor mandatory, nor does it form a belief for a modification of the injunction which constitutes part of the consent decree.

5. Modification of a consent decree in view of the existing factual circumstances would thwart the purpose for which the injunction was originally granted. If the injunction is modified, the moving Unions will attempt to compel, contrary to the wishes or desires of the employees, the Louisville and Nashville Railroad Company to agree to a Union Shop by the use of economic force, and, thus, would compel all employees of the Railroad to join and retain their membership in the moving labor unions in order to obtain and maintain rights and benefits of employment which are now protected by the injunction. The modification requested is in effect a reversal of the judgment heretofore entered, protecting said non-Union employees.

6. The Railroad is informed upon information and belief that large numbers of its employees are opposed to the modification of the judgment, decree and injunction entered in this case on December 7, 1945.

Wherefore, the defendant Louisville & Nashville Railroad Company, prays that the motion of the defendant Unions to modify the judgment, decree and injunction be denied.

Woodward, Hobson & Fulton, 1805 Kentucky Home Life Bldg., Louisville 2, Kentucky.

[fol. 74]

IN UNITED STATES DISTRICT COURT

AMENDED RESPONSE OF CERTAIN PLAINTIFFS
TO MOTION TO MODIFY—Filed January 20, 1958

1. C. P. Jacobs and J. W. Watkins state that they are two of the original plaintiffs named in the complaint heretofore filed in this case. They object to any modification of the injunction heretofore issued in this case on December 7th, 1945. For their response to the motion of the Union defendants to modify the injunction they adopt by reference the response heretofore filed herein by certain plaintiffs.

2. With leave of Court heretofore granted, the plaintiffs; Walter E. Lee, Marion A. Holman, E. D. Walters, Sherman Napier, V. L. Crutcher, C. P. Jacobs and J. W. Watkins, amend their response heretofore filed to the motion of the Union defendants to modify the injunction heretofore issued in this case.

(a) They state that there exists upon the Louisville & Nashville Railroad hostility, bitterness and a feeling of resentment on the part of the employees of said Railroad who are members of the defendant Unions toward the employees of said Railroad who do not belong to any of said defendant Unions. This attitude on the part of the Union employees toward the non-union employees of the Railroad has been greatly enhanced as a result of the 1955 strike which occurred upon the Railroad for fifty-eight days in the spring of 1955.

(b) A great many of the employees of the Railroad employed in the shop crafts worked during the 1955 strike, both Union and non-union employees. Those who belonged to the Union and who worked during said strike were either expelled from the Union or voluntarily ceased to pay dues therein. Following the termination of the strike the Union employees of the Railroad displayed a hostile attitude toward the employees who had worked during the strike and subjected said employees to all manner of indignities in an effort to force said employees to give up their employment. This feeling of hostility and antipathy [fol. 76] on the part of the Union employees toward the employees who worked during the 1955 strike has been continued to this day. Should this Court modify the injunction in this case in order to permit the negotiation for a union shop upon the Railroad, the defendant Unions will force the Railroad by means of a strike, for which a strike ballot has already been taken, to adopt a union shop. All the non-union employees of the Railroad in the shop crafts (including the union members who worked during the 1955 strike and who subsequently were expelled from the Union by reason thereof) will be compelled to join the shop craft unions.

- (c) The hostility and antipathy between the Union defendants and the employees who worked during the 1955 strike is so great that it can be reasonably anticipated that after the adoption of a union shop agreement upon the Railroad, the employees who worked during the 1955 strike will have to join the Union and thereafter the hostility and antipathy will be continued against them, and said employees will be discriminated against with respect to employment benefits and rights, contrary to the judgment of the Court heretofore entered in this case and contrary to the agreement of the parties in consenting to the entry of such judgment.
- (d) Such discrimination and hostility which will be practiced by the defendant Unions against employees who worked during the 1955 strike (and who are compelled to come into the Union to hold their jobs after the adoption of a union shop agreement) will not be based upon the non-union status of such employees, and, therefore, will not be in violation of the judgment and injunction heretofore issued in this case, and such employees will not be subject to the protection of the injunction issued in this [fol. 77] case. Nevertheless such employees can and will be discriminated against by reason of the hostility and antipathy existing against them on the part of the defendant Unions and which will continue to exist against them. The adoption of a union shop will be a device by which to set at naught the benefits obtained by the non-union employees in this case and the protection heretofore granted them by the entry of the judgment and the issuance of the injunction in this case. The Amendment of the Railway Labor Act does not require the adoption of a union shop nor does it require this Court to modify its injunction issued upon the agreement of the parties to this case. In order to continue the protection afforded to the plaintiffs and the classes represented by them the Court should deny any modification of said injunction.
- (e) Any modification of the injunction to permit the adoption of a union shop would, therefore, be inequitable and oppressive to the plaintiffs and the classes represented by them.

3. Plaintiffs named above file this response not only in behalf of themselves but in behalf of all the classes represented by them, to-wit: the non-union employees of the Louisville & Nashville Railroad employed in the shop crafts.

Wherefore said plaintiffs pray that the motion of the defendant Unions to modify the judgment, decree and injunction be denied.

Marshall P. Eldred, 420 South Fifth Street, Louisville 2, Kentucky, Attorney for Plaintiffs.

Of Counsel: Brown, Eldred and Tachau

[fol. 78] CERTIFICATE OF SERVICE (omitted in printing).

IN UNITED STATES DISTRICT COURT

MOTION OF N. L. PADGETT, ET AL. TO INTERVENE—

Filed January 20, 1958

1. Come N. L. Padgett, Simon Durant, H. E. Hatfield, J. W. Ritter, H. Johnson, L. A. Hutton, Hobert Poynter, and S. S. Vanderpool and move the Court pursuant to Rule 24 (b) of the Federal Rules of Civil Procedure to permit them to intervene in this action for the purpose of responding and objecting to the motion of the defendant Unions to modify the injunction heretofore issued in this case.

2. For grounds for their motion said movants state

(a) The above styled action is a class action in which the named plaintiffs sued for themselves and in behalf of all non-union employees employed by the Louisville & Nashville Railroad Company in the shop crafts. Movants are employees of said Railroad employed in the shop crafts and are not members of the defendant Unions.

[fol. 79] (b) The defense of movants to the motion of the defendant Unions to modify the injunction issued in this case, and the defense of the plaintiffs to such a motion of the defendant Unions, have questions of law and fact in common.

3. Movants attach hereto their intervening response to the motion of the defendant Unions to modify the injunction heretofore issued in this case.

Wherefore movants pray the Court for permission to file herein their intervening response to the motion of defendant Unions for a modification of the injunction heretofore issued herein.

Marshall P. Eldred, 420 South Fifth Street, Louisville 2, Kentucky, Attorney for Movants.

Of Counsel: Brown, Eldred and Tachau

NOTICE

TO: Robert E. Hogan, Kentucky Home Life Building,
Louisville 2, Kentucky
Richard R. Lyman, 741 National Bank Building,
Toledo 4, Ohio, Attorneys for Defendant Unions
John P. Sandidge, Kentucky Home Life Building,
Louisville 2, Kentucky, Attorney for Defendants
Louisville & Nashville Railroad Company

Please take notice that the undersigned attorney will on Monday, February 3d, 1958, at 9:30 A. M., in the Court Room of Judge Roy M. Shelbourne, United States District Court for the Western District of Kentucky, bring the foregoing motion on for hearing and disposition.

This January 17th, 1958.

Marshall P. Eldred, Attorney for Movants.

CERTIFICATE OF SERVICE (omitted in printing).

IN UNITED STATES DISTRICT COURT**INTERVENING RESPONSE OF N. L. PADGETT, ET AL.—****Filed January 20, 1958**

By leave of Court N. L. Padgett, Simon Durant, H. E. Hatfield, J. W. Ritter, H. Johnson, L. A. Hutton, Hobert Poynter, and S. S. Vanderpool file herein their intervening response to the motion of the defendant Unions to modify the injunction heretofore issued herein.

1. N. L. Padgett is a carman employed in defendant Railroad's shops at Boyles, Alabama. Simon Durant is a boilermaker's helper employed in defendant Railroad's shops at Boyles, Alabama. H. E. Hatfield is a machinist [fol. 81] employed in defendant Railroad's shops in Louisville, Kentucky. J. W. Ritter is an electrician employed in defendant Railroad's shops in Louisville, Kentucky. H. Johnson is an electrician employed in defendant Railroad's shops in Louisville, Kentucky. L. A. Hutton is an electrician employed in defendant Railroad's shops in Radnar, Tennessee, Hobert Poynter is a carman employed in defendant Railroad's shops in Corbin, Kentucky. S. S. Vanderpool is a carman employed in defendant Railroad's shops in Corbin, Kentucky.

2. Each of said intervenors is employed by the defendant, Louisville & Nashville Railroad Company, is a member of the shop crafts, and is not a member of the defendant Unions.

3. Intervenors are members of a class which is so numerous as to make it impracticable to bring them all before the Court. Intervenors will fairly insure the adequate representation of said class. The character of the right sought to be enforced against the class is both joint and several and there are common questions of law and fact affecting the several rights and a common defense is made by all to the rights asserted against the class.

4. Intervenors file their response to the motion of the defendant Unions to modify the injunction heretofore

issued herein on behalf of themselves and all of the class represented by them including but not limited to the employees of the defendant Railroad listed on Schedule A hereto attached.

5. For their response, and that of the class represented by them, to the motion of the defendant Unions to modify the injunction heretofore issued herein, intervenors adopt [fol. 82] by reference the response and the amended response heretofore filed herein by certain plaintiffs as though fully set out herein.

Wherefore intervenors pray that the motion of the defendant Unions to modify the judgment, decree and injunction be denied.

Marshall P. Eldred, 420 South Fifth Street, Louisville 2, Kentucky, Attorney for Intervenors.

Of Counsel: Brown, Eldred and Tachau

SCHEDULE A SOUTH LOUISVILLE SHOPS

<i>Name of Employee</i>	<i>Place Employed</i>
C. Rogers	South Louisville Shops
B. Noffsinger	South Louisville Shops
A. W. Kaelin	South Louisville Shops
D. H. DeWeese	South Louisville Shops
W. H. Sims	South Louisville Shops
A. R. Hicks	South Louisville Shops
L. R. Doplin	South Louisville Shops
Abe S. Bryant, Jr.	South Louisville Shops
John E. Beck	South Louisville Shops
Fred Obermiller	South Louisville Shops
A. H. Stromire	South Louisville Shops
John Heaton	South Louisville Shops
C. R. Hart	South Louisville Shops
J. E. Churchman	South Louisville Shops

<i>Name of Employee</i>	<i>Place Employed</i>
F. B. Denning	South Louisville Shops
W. L. Thomas	South Louisville Shops
[fol. 83]	
J. R. Ping	South Louisville Shops
J. W. Slaughter	South Louisville Shops
F. B. DeWitt	South Louisville Shops
J. E. Hardin	South Louisville Shops
Troy H. Brown	South Louisville Shops
J. C. Young	South Louisville Shops
W. A. Kotheimer	South Louisville Shops
A. H. Sturman	South Louisville Shops
J. M. Bean	South Louisville Shops
C. L. Black	South Louisville Shops
G. L. Hagan	South Louisville Shops
R. L. Coleman	South Louisville Shops
Wm. C. Hasher	South Louisville Shops
E. L. Rowen	South Louisville Shops
Joseph Mayer	South Louisville Shops
Ray Sampson	South Louisville Shops
L. A. Oeswein	South Louisville Shops
W. J. Blakely	South Louisville Shops
W. D. Hasty	South Louisville Shops
Theophilus Helton	South Louisville Shops
Howard Montgomery	South Louisville Shops
Damon Hart	South Louisville Shops
E. Parker	South Louisville Shops
L. T. Crigler	South Louisville Shops
J. R. Parkerson	South Louisville Shops
Virgil Rigsby	South Louisville Shops
Wiley F. Baker	South Louisville Shops
C. J. Wilcox	South Louisville Shops
W. L. Williams	South Louisville Shops
A. Finnell	South Louisville Shops
P. E. Lowry	South Louisville Shops
C. J. Gaines	South Louisville Shops
J. Hayes	South Louisville Shops
[fol. 84]	
F. Madry	South Louisville Shops
M. Y. Martin	South Louisville Shops
G. Goetzinger	South Louisville Shops

<i>Name of Employee</i>	<i>Place Employed</i>
L. B. Pottinger	South Louisville Shops
E. L. Bewley	South Louisville Shops
F. L. Kleier	South Louisville Shops
J. O. Shaw	South Louisville Shops
H. Webb	South Louisville Shops
J. F. Harbison	South Louisville Shops
William E. Lee	South Louisville Shops
Robert P. Willis	South Louisville Shops
J. H. Schindler	South Louisville Shops
Bert Longest	South Louisville Shops
R. W. Taylor	South Louisville Shops
E. M. Mason	South Louisville Shops
R. L. Cundiff	South Louisville Shops
Luke Sharp	South Louisville Shops
Garnet S. Hoffman	South Louisville Shops
Geo. H. C. Lynn	South Louisville Shops
A. Amloch	South Louisville Shops
W. M. Roger	South Louisville Shops
L. N. Burns	South Louisville Shops
Fred Wildt	South Louisville Shops
E. Gralls	South Louisville Shops
C. E. Bennett	South Louisville Shops
F. Edinger	South Louisville Shops
J. T. McCormack	South Louisville Shops
J. N. Fenell	South Louisville Shops
C. W. Hauselmann	South Louisville Shops
H. Leonard	South Louisville Shops
E. E. Beery	South Louisville Shops
C. A. Robertson	South Louisville Shops
B. Devine	South Louisville Shops
W. G. Moore	South Louisville Shops
[fol. 85]	South Louisville Shops
L. H. Crutcher	South Louisville Shops
A. C. Hargrave	South Louisville Shops
R. L. Free	South Louisville Shops
J. T. Buckinham	South Louisville Shops
S. Ellis	South Louisville Shops
T. A. Taylor	South Louisville Shops
W. Hester	South Louisville Shops
H. W. Schlatter	South Louisville Shops

<i>Name of Employee</i>	<i>Place Employed</i>
R. L. Moore	South Louisville Shops
W. W. Walker	South Louisville Shops
G. Werker	South Louisville Shops
A. L. Bishop	South Louisville Shops
C. Huff	South Louisville Shops
Louis Hess	South Louisville Shops
M. T. Sullivan	South Louisville Shops
G. P. Martin	South Louisville Shops
Guy Mitchum	South Louisville Shops
A. Engleman	South Louisville Shops
H. C. McCubbins	South Louisville Shops
O. A. Lucas	South Louisville Shops
J. E. Carpenter	South Louisville Shops
Virgil L. Emmett	South Louisville Shops
F. R. Bowles	South Louisville Shops
Henry Nichter	South Louisville Shops
I. J. Shipley	South Louisville Shops
H. A. Troxell	South Louisville Shops
H. Lurie	South Louisville Shops
C. D. Shain	South Louisville Shops
M. A. Martin	South Louisville Shops
J. L. White	South Louisville Shops
G. W. Ritman	South Louisville Shops
H. H. England	South Louisville Shops
W. C. Smith	South Louisville Shops
R. B. Puckett, [fol. 86]	South Louisville Shops
J. R. Perry	South Louisville Shops
R. H. Parrott	South Louisville Shops
L. E. Sanders	South Louisville Shops
J. M. Chapin	South Louisville Shops
E. N. Elkins	South Louisville Shops
A. H. Patterson	South Louisville Shops
E. H. Carrier	South Louisville Shops
W. K. Fries	South Louisville Shops

<i>Name of Employee</i>	<i>Place Employed</i>
H. D. Steele	South Louisville Shops
C. R. Mills	South Louisville Shops
Floyd Coyne	South Louisville Shops
R. L. Shelton	South Louisville Shops
C. H. Raley	South Louisville Shops
C. R. Main	South Louisville Shops
R. I. Caster	South Louisville Shops
C. O. Evans	South Louisville Shops
O. R. Oakes	South Louisville Shops
W. G. Gilpin	South Louisville Shops
Roy B. Doyle	South Louisville Shops
L. H. Ballinger	South Louisville Shops
H. C. Vittitow	South Louisville Shops
R. J. Arnold	South Louisville Shops
A. E. Whitesides	South Louisville Shops
O. B. Merideth	South Louisville Shops
R. O. Williams	South Louisville Shops
W. O. Vittitow	South Louisville Shops
W. R. Freeze	South Louisville Shops
Leon Mitchell	South Louisville Shops
C. Cheatham	South Louisville Shops
C. H. Crawley	South Louisville Shops
W. T. Spears	South Louisville Shops
D. W. Braden	South Louisville Shops
Wm. Rudert	South Louisville Shops
J. W. Morris [fol. 87]	South Louisville Shops
C. Craig	South Louisville Shops
B. Herntz	South Louisville Shops
T. H. Brownell	South Louisville Shops
H. O. Wise	South Louisville Shops
D. F. Duncan	South Louisville Shops
J. A. Wolz	South Louisville Shops
L. H. Denis	South Louisville Shops

<i>Name of Employee</i>	<i>Place Employed</i>
J. B. Reaves	South Louisville Shops
G. H. Green	South Louisville Shops
Teddy Smith	South Louisville Shops
N. R. McCombs	South Louisville Shops
J. A. Hoagland	South Louisville Shops
T. V. Corbett	South Louisville Shops
T. E. Speer	South Louisville Shops
Obie Stone	South Louisville Shops
M. H. Hibbs	South Louisville Shops
John A. Link	South Louisville Shops
Albert Lee	South Louisville Shops
McKinley Inman	South Louisville Shops
Robert H. Kohler	South Louisville Shops
W. J. Ingle	South Louisville Shops
L. E. Toole	South Louisville Shops
H. R. Willett	South Louisville Shops
E. E. Yates	South Louisville Shops
D. A. Lee	South Louisville Shops
Stanley Ellis	South Louisville Shops
Albert W. Washer	South Louisville Shops
Eugene R. Wegert	South Louisville Shops
H. A. Hargrave	South Louisville Shops
G. H. Farley	South Louisville Shops
A. P. Roth	South Louisville Shops
A. B. LaMasters	South Louisville Shops
O. E. Heffner	South Louisville Shops
[fol. 88]	South Louisville Shops
L. W. Steele	South Louisville Shops
L. Merrifield	South Louisville Shops

BOYLES SHOP, BIRMINGHAM, ALA.

Press Murphree	Boyles Shop
G. A. Baker	Boyles Shop
Fred R. Findley	Boyles Shop

<i>Name of Employee</i>	<i>Place Employed</i>
Leonard F. Thomas	Boyles Shop
Renie Ryan	Boyles Shop
Lonnie Elms	Boyles Shop
Reafer Ward	Boyles Shop
Sam Jones	Boyles Shop

CORBIN, KENTUCKY

W. W. Tompkins	Corbin, Kentucky
John H. Smith	Corbin, Kentucky
Luther Carpenter	Corbin, Kentucky
H. B. Morgan	Corbin, Kentucky
Robert Lee Chappell	Corbin, Kentucky
E. V. Chappell	Corbin, Kentucky
Roscoe H. Teague	Corbin, Kentucky

IN UNITED STATES DISTRICT COURT

ORDER—Entered February 4, 1958

On Monday, February 3, 1958, this action came on for trial to the Court, and there appeared, Marshall P. Eldred, for certain plaintiffs; Robert E. Hogan, Richard R. Lyman and Milton Kraemer, for the defendant and Jno. P. Sandidge and H. G. Breetz for the Louisville and Nashville R. R. Co.

Mr. Eldred moved the Court to rule on his motion to intervene on the part of certain plaintiffs, filed January [fol. 89] 20, 1958, and this motion was sustained.

The case was stated for the defendant by Mr. Lyman and Mr. Kraemer, for the plaintiff by Mr. Eldred, and for the L&NRR Co. by Mr. Sandidge.

Evidence for the plaintiff was introduced and concluded.

Counsel asked for time to file briefs. Simultaneous briefs are to be filed within three weeks, counsel is allowed ten days after the service of a copy of said brief by adversary

counsel, for filing reply briefs. When said briefs are filed said action will be submitted.

Roy M. Shelbourne, Judge, U.S. District Court.

A Copy Attest:

Martin R. Glenn, Clerk, B. F. Allen, Deputy.

February 4, 1958

Copies mailed to

Attorneys of Record.

IN UNITED STATES DISTRICT COURT

MEMORANDUM—Dated August 7, 1958

In July, 1945, twenty-eight non-union employees of the Louisville & Nashville Railroad Company, for themselves and representing all non-union employees upon the Louisville & Nashville System, instituted an action against that railroad company and certain shop craft unions, seeking a declaration of rights and an injunction.

The plaintiffs alleged that the railroad and the unions [fol. 90] had discriminated against the class of employees represented by plaintiffs in granting promotions, overtime work, and other privileges and benefits and had, in violation of plaintiffs' seniority rights, preferred members of the unions in their employment relationship because the plaintiffs and the class represented by them had refused to join or maintain membership in the unions.

That proceeding in this Court culminated, on December 7, 1945, in the entry of a judgment "by consent and agreement of all the parties." That judgment is as follows:

"By consent and agreement of all the parties to this action, it is ordered, adjudged and decreed as follows:

"That the defendants, other than the defendant Railroad, and all of the subordinate lodges and locals

of the defendant Unions, acting as the duly designated and authorized representatives of any employes of defendant Railroad, are, in accordance with the provisions of the Railway Labor Act and in accordance with the duly adopted bargaining agreements between the defendant Railroad and defendant Unions, under the obligation and duty to represent and treat fairly and impartially, and without discrimination based on membership or non-membership in any labor organization, all members of the crafts or classes of boilermakers, machinists, carmen, sheet metal workers, electricians, power house employes and railway shop laborers, including plaintiffs to this action, without regard to whether said employes, or any of them, are members of or join or retain their membership in any of said defendant labor organizations, or in any labor organization;

[fol. 91] "That the defendant Railroad, in accordance with the provisions of the Railway Labor Act and in accordance with the duly adopted bargaining agreements between the said Railroad and the defendant Unions, is under the duty and obligation to refrain from discrimination against its employes in the crafts or classes of boilermakers, machinists, carmen, sheet-metal workers, electricians, power house employes and railway shop laborers, including the plaintiffs in this action, because of or by reason of the failure or refusal of said employes to join or retain their membership in any of the defendant labor organizations, or in any labor organization;

"That the plaintiffs in this action and all other employes of the defendant Railroad, employed in the boilermakers, machinists, carmen, sheet metal workers, electricians, power house employes and railway shop laborers crafts or classes, who are not members of the defendant labor organizations, or any subordinate lodge or local thereof, shall from and after the date hereof and in accordance with the collective bargaining agreements, be entitled, irrespective and without regard to whether said employes, or any of them,

are members of or join or retain their membership in any of said defendant labor organizations, or in any labor organization, to the rights of promotion to preferred jobs, to jobs in a higher classification paying a higher rate of pay, to proper protection of seniority, to bid on or be assigned to vacancies, to leaves of absence with proper protection of seniority and to their proper share of overtime work and compensation therefor, as provided for in such agreements now in effect or that may hereafter be in effect in accordance with the Railway Labor Act;

[fol. 92] "That all of the defendants, and all of the subordinate lodges and locals of the defendant Unions acting as the duly and authorized representatives of any employes of defendant Railroad, their officers, agents, employes and members, and the defendant Railroad, be and they are hereby enjoined from requiring that the plaintiffs and the classes represented by them in this action join or retain their membership in any of said defendant labor organizations, or any labor organization, as a condition to receiving promotion, leaves of absence, proper protection of seniority, overtime work and any other rights or benefits which may arise out of or be in accordance with the regularly adopted bargaining agreements in effect between the defendant Railroad and the defendant Unions, or that may hereafter be in effect between the defendant Railroad and the defendant Unions in accordance with the Railway Labor Act; and are enjoined from denying to said plaintiffs, or the classes represented by them in this action, promotion to such preferred jobs, jobs in a higher classification with a higher rate of pay, leaves of absence, proper protection of seniority, overtime work or any other right or benefit arising out of or in accordance with the regularly adopted bargaining agreements in effect between the defendant Railroad and the defendant Unions, or that may hereafter be in effect between the defendant Railroad and the defendant Unions in accordance with the provisions of the Railway Labor Act, for the sole and only reason that the plaintiffs

or classes represented by them in this action, are not members or refuse to join or to retain their membership in any of said defendant labor organizations, or any labor organization; and they are further enjoined, [fol. 93] in the application of the provisions of the regularly adopted bargaining agreements in effect between the defendant Railroad and the defendant Unions, or that may hereafter be in effect between the defendant Railroad and the defendant Unions in accordance with the provisions of the Railway Labor Act, from discriminating against the plaintiffs and the classes represented by them in this action by reason of or on account of the refusal of said employes to join or retain their membership in any of the defendant labor organizations, or any labor organization;

"The Court retains control of this action for the purpose of entering such further orders as may be deemed necessary or proper.

"That one-half the costs of this action be paid by defendant Railroad and the other half thereof be paid by the defendant Unions."

In the case of System Federation No. 91 v. Reed, 180 F. 2d 991, at page 998, the Court of Appeals for the Sixth Circuit declared this judgment should be considered as a judgment in a true class action "and res adjudicata of the rights of all of the members of the class represented by the parties plaintiff therein."

July 2, 1957, the defendant unions and their successors filed in this action their motion to modify the injunctive phase of the judgment of December 7, 1945. The amendment sought was to provide that the injunction should have no prospective application to prohibit the defendant unions and the railroad from negotiating, entering into, or applying and enforcing any agreement or [fol. 94] agreements authorized by Section 2, Eleventh, of the Railway Labor Act as amended January 10, 1951.

It was alleged in the motion that, at the time the original complaint in this case was filed and at the time the

judgment was entered, the Railway Labor Act, particularly Section 2, Fourth and Fifth thereof, made it unlawful for carriers to interfere in any way with the organization of their employees or to coerce or compel their employees to join or remain, or not to join or remain, members of any labor organization.

It was further alleged that the amendment to the Railway Labor Act of January 10, 1951, and now constituting Section 152, Eleventh, of Title 45, United States Code, permitted the making of union security agreements as limited by that amendment, and authorized carriers and bargaining representatives of railway labor to provide for a union shop; that the unions here involved were currently seeking to negotiate an agreement with the railroad requiring the employees, as a condition to their continued employment, to become and remain members of the labor organizations representing their respective crafts; but, that the defendant railroad had refused to negotiate for such an agreement for the asserted reason that it would subject itself and such labor organizations to charges of contempt for violation of the injunctive phases of the judgment entered herein December 7, 1945.

It was alleged that the 1951 amendment to the Railway Labor Act terminated the rights of the non-union employees to be free from the requirements of union security agreements, and it was further alleged that it was no longer equitable that the injunction should have prospective application by prohibiting the defendant unions and the railroad from negotiating such union shop agreements. [fol. 95] The railroad filed a motion for an extension of time in which to file its response in the present proceedings to a date after the defendant unions should have given notice to individual members of the classes and crafts involved, alleging that some 2,500 of its employees in said classes and crafts did not belong to any labor organization, all and each of whom had rights adjudged to them in the decree of December 7, 1945, which entitled them to notice of the unions' motion. Such an order was entered, requiring that all persons whose rights might be affected by a modification of the injunction should be

given notice of a hearing not less than 20 days prior to the date set for the hearing.

Five of the original plaintiffs in the complaint filed in 1945, for themselves and all non-union employees of the defendant railroad in the machinists, carmen, sheet metal workers, electricians, boilermakers and firemen, oilers, helpers, and laborers crafts, filed a response alleging:

(1) That the movant unions were without authority on behalf of the employees to negotiate for a union shop for the reason that the unions were selected as bargaining representatives for the various crafts under the provisions of the Railway Labor Act prior to January 10, 1951, the effective date of the Railway Labor Act amendment, and at a time when the Railway Labor Act did not authorize or permit the bargaining representatives of employees to negotiate for a union shop;

(2) That, in the action filed by them in 1945, monetary damages in the amount of \$5,000.00 each was sought to be recovered by the 28 plaintiffs; that in agreeing to the said decree the 28 plaintiffs surrendered their right to [fol. 96] their claims for monetary damages, except to be paid, collectively, a total of \$5,000.00; that, having surrendered that claim for damages in partial exchange for the judgment providing a declaration of rights and injunction, it would be inequitable to permit the unions to now negotiate for a union shop;

(3) That there had been no change in the factual situation surrounding the parties and the employment of the plaintiffs and the classes represented by them which would warrant or justify a modification of the injunction; that the change effected by the amendment to the Railway Labor Act was neither directory nor mandatory, but permissive only, and the Court would not be authorized to modify the injunction, absent the change in factual situation, and

(4) Finally, the decree or judgment of injunction has not been used as an instrument of wrong or oppression;

but, a modification of that decree would make it possible for the unions, through economic pressure or strike, to compel the institution of a union shop and thereby compel all of the employees of the railroad to join and retain membership in a labor union in order to obtain and maintain rights and benefits of employment on the railroad, and would thereby set for nought and nullify the judgment entered by agreement of all the parties to the prejudice of all non-union employees of the railroad.

By amendment to plaintiffs' response, it was alleged that there existed a feeling of hostility, bitterness and resentment on the part of the railroad's employees who were members of the defendant unions toward the employees who were non-members of the unions; that this hostility and bitterness had been greatly enhanced as a [fol. 97] result of a 58-day strike which occurred on the railroad in 1955. It was alleged that during said strike union and non-union employees worked, and that those who belonged to the unions and who worked during the strike were either expelled from the unions or voluntarily relinquished their membership therein; that following the termination of the strike the union employees displayed a hostile attitude toward all employees who had worked during the strike and subjected said employees to all manner of indignities in order to force them to relinquish their employment, and that this feeling of hostility continued. It was alleged that should the modification of the injunction be granted a union shop would be established and the non-union employees would be compelled to join the unions and, after they were subject to the unions' discipline, they would be further discriminated against and punished for their failure to voluntarily seek and maintain membership in the unions and for their failure to cease work during the period of the strike.

Testimony was heard by the Court on February 3 and 4, 1958, and, at the request of counsel, time was granted for the filing of briefs. Counsel for the unions, for the railroad, and for the non-union employees have filed extensive briefs showing intensive study, all of which have been most helpful to the Court.

The question for decision, as stated by counsel for the unions, is "should an injunction be modified, in its prospective application, when the law upon which it was based is subsequently changed so as to expressly authorize conduct which was previously forbidden."

Authority for modification of the judgment and injunction is referred to as Rule 60 (b) (5) of the Federal Rules of [fol. 98] Civil Procedure. The pertinent portion of which rule is,

"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; . . . "

The railroad and non-union employees insist that, under the law applicable to this case, a change of law alone is not compelling and, in fact, would not authorize the modification in the absence of change in the facts or circumstances, citing *Thompson v. Maxwell*, 95 U.S. 391; *United States v. Swift & Company*, 286 U. S. 106; *Western Union v. International Brotherhood (CA 7)*, 133 F. 2d 955; *Pacific Tel. & Tel. Company v. Henneford*, 199 Wash. 462, 92 P. 2d 214; *Degenhart v. Hartford*, 18 N.E. 2d 990.

The unions, conceding arguendo that a change in facts as well as law is a part of the burden of proof devolved upon them in seeking the modification, say that no more basic or compelling change in facts could exist than the change in law which completely undercuts the source of the rights protected by the injunction. They argue that when the injunction was issued railroad security agreements (union shops) were prohibited by statute and today they are expressly approved, and that the express provision of the statute that such agreements "shall be permitted" shows a change in factual relationships than which none could be more decisive.

[fol. 99] We adopt for discussion the following outline contained in the brief of counsel for the unions:

I. Legal Basis for Modification

- (a) Continuing authority of the Court to modify prospective application of judgment.
- (b) Sufficiency of change in law to justify modification.
- (c) Authority to modify unaffected by consent nature of decree.

II. Insubstantial Nature of Objects Raised by Other Parties.

At the inception of this case, the Court was impressed with the language of the 1951 amendment to the Railway Labor Act which provided that, despite any other provisions of the Railway Labor Act or any other statute or law of the United States or of any state, any carrier affected by the Railway Labor Act and a labor organization duly designated and authorized to represent employees in accordance with the requirements of that Act shall be permitted to make agreements requiring, as condition of continued employment, that within 60 days following the beginning of such employment, etc., all employees should become members of the labor organization representing their craft. However, from the history of the 1951 amendment, as reflected by the proceedings in Committees and as determined by the Supreme Court in the case of Railway Employees' Dept. v. Hanson, 351 U. S. 225, "the union shop provision of the Railway Labor Act is only permissive. Congress has not compelled nor required carriers and employers to enter into union shop agreements."

[fol. 100] This Court has concluded that the Railway Labor Act as amended permits the railroad and bargaining unions to effectuate by agreement a union shop. Correspondingly, the Act leaves the railroad and bargaining unions at liberty to agree that a union shop shall not prevail and that a condition of retention of employment shall not be the maintenance of union membership by an employee in the bargaining union or any union. This reasoning ap-

plied to the agreement which underlay the decree of December 7, 1945, when the Railway Labor Act forbade a union shop, forces the Court to the conclusion that the unions were not compelled to agree that membership in a union would not be required of the plaintiffs as a condition of employment in any bargaining agreement then in effect between the railroad and the unions, or such agreements as might thereafter be in effect between the railroad and the defendant unions in accordance with the Railway Labor Act.

A reading of the judgment will show a reference in each instance where the injunction was given, in referring to the bargaining agreement, not only to the agreement then in effect but to such future agreements as might thereafter be effected between the railroad and the bargaining unions. There was then no provision in the Railway Labor Act prohibiting the railroad and the unions from agreeing that a union shop should not obtain. There is no prohibition now in the Railway Labor Act as amended prohibiting the railroad and the bargaining unions from agreeing that a union shop shall not prevail. Under the teaching of the Hanson case, if the union shop agreement is permissive, it is also permissive to agree that a union shop shall not prevail.

The Court agrees with counsel for the unions that there is continuing authority in the Court to modify the prospective [fol. 101] application of a judgment of injunction. This is the teaching of the case of the United States v. Swift & Company, 286 U. S. 106, where the Supreme Court said there was no doubt that a court of equity has power to modify an injunction in adaptation to changed conditions though the injunction was entered by consent. The Court said, "Power to modify the decree was reserved by its very terms, and so from the beginning went hand in hand with its restraints. If the reservation had been omitted power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need . . . The result is all one whether the decree has been entered after litigation or by consent." There remains the question: should that power be exercised in this case?

Considering counsel's second heading, the sufficiency of change in law to justify modification, it is concluded

that the reasoning of the Swift case leads to the conclusion that the change in the Railway Labor Act in 1951, deleting the prohibition against a union shop and making it permissive for the railroad and the bargaining unions to provide for a union shop, does not authorize a modification of the decree which enjoined the railroad and the unions from providing for a union shop in existing agreements or those to be thereafter made under the provisions of the Railway Labor Act. The law would have prohibited the then making of such an effective bargain had no agreement been made. In the Swift case, the Supreme Court said, "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned."

[fol. 102] Finally, upon counsel's proposition that the nature of objections raised by the railroad and the original plaintiffs are insubstantial, it is shown without an attempt at refutation that bitterness and hostility exist between the union and non-union employees of the railroad, and also between the unions and their members who worked during the strike of 1955. The existence or non-existence of animosity, hostility, or bitterness is not decisive of the question involved on the pending motion. Counsel for the unions insist that any threat of reprisal from that source could be avoided by suitable provision in the judgment or order of modification in addition to the safeguard provided in the 1951 amendment to the Railway Labor Act. The circumstances proven do not convince the Court that such supervision of the conduct of a union of its affairs among its own membership, as such a provision might entail, should be undertaken.

It is to be remembered that the provisions of the Railway Labor Act made illegal a union shop in 1945, when the injunction was agreed upon. Hence, it was then unnecessary for the railroad and the unions to agree, as they did, that the non-union members should not then be required to join or maintain membership in any of their craft unions as a condition precedent to employment. The law so prohibited, Section 152, Fourth and Fifth, Title 45, United States Code, Railway Labor Act. The railroad and

unions went further to provide by their agreement that no such requirement of union membership should thereafter be in effect in any bargaining agreement in accordance with the provisions of the Railway Labor Act. The 1951 amendment to the Act did no more than make negotiations for a union shop permissive, *Railway Employees' Dept. v. Hanson, supra*. The amendment did not nullify the agreement or the injunction. It did not prohibit an agreement [fol. 103] between the railroad and the unions that a union shop should not exist. Hence, the Court leaves the parties as they agreed to be and to remain.

The motion to modify is overruled and an order so providing will be tendered for entry by counsel for plaintiffs in accordance with Rule 7 of the local rules of this Court.

Roy M. Shelbourne, United States District Judge

August 7, 1958

[fol. 104]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO MODIFY INJUNCTION—

Entered August 22, 1958

The motion of the defendant unions and their successors to modify the injunctive phase of the "Judgment, Decree and Injunction" of this Court, heretofore entered in this case on December 7, 1945, having been heard and considered by the Court upon the pleadings, exhibits, evidence, written briefs and oral arguments of the parties, by counsel, and the Court being duly and sufficiently advised, it is

Ordered, Adjudged and Decreed that the motion of said defendants be, and the same is hereby overruled.

Roy M. Shelbourne, United States District Judge

August 22nd, 1958

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 13,768

SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES DEPARTMENT AFL-CIO, et al., Appellants,

—v.—

O. V. WRIGHT, et al., Appellees.

**APPEAL FROM UNITED STATES DISTRICT COURT, WESTERN
DISTRICT OF KENTUCKY AT LOUISVILLE.**

**Appendix of Appellees other than Louisville and Nashville
Railroad Company—Filed July 15, 1959**

[File endorsement omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil No. 942

O. V. WRIGHT, et al., Plaintiffs,

—v.—

SYSTEM FEDERATION No. 91, ETC., Defendant.

Transcript of Testimony, Motion to Modify the Injunction
of December 7th, 1945—February 3, 1958

Heard Before:

Honorable Roy M. Shelbourne, United States District
Judge for the Western District of Kentucky, without a jury.

APPEARANCES:

Marshall P. Eldred, attorney for plaintiffs.

Richard R. Lyman, Toledo, Ohio, Milton Kramer, Washington, D. C., and Robt. E. Hogan attorneys for defendant,
System Federation No. 91.

John P. Sandidge and H. G. Breetz attorneys for L. & N.
Railroad.

N. L. PADGITT was called as a witness by counsel for the
plaintiffs, and after having been duly sworn, was examined
and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Reporter your name and address.

A. N. L. Padgett, Mount Pinson, Alabama, Route 1.

[fol. 2] Q. Were you employed by the Louisville and Nashville Railroad Company?

A. Yes, sir.

Mr. Lyman: Court please, at this time I would like to object to the introduction of the testimony by this witness and any others that may follow, for the reason that there is no factual issue before the Court, and therefore any testimony that may be presented will be completely irrelevant to the pending motion.

By the Court: All right, your objection is overruled, but the objection may be considered as having been made to the introduction of each witness without being repeated each time.

Mr. Lyman: Thank you, Your Honor.

Q. Where are you employed and in what capacity, Mr. Padgett?

A. At Boyles, Alabama.

Q. Is Boyles, Alabama, the suburb of Birmingham, at which are located shops of the Louisville & Nashville Railroad?

A. Yes.

Q. And what is your job at Boyles?

A. Carman.

Q. How long have you been a carman at Boyles?

A. Since '44.

Q. Prior to that, what job did you hold with the railroad?

A. As a helper.

Q. Carman helper?

A. Yes, sir.

Q. How long did you hold that job?

A. Well, a good many years.

[fol. 3] Q. Prior to 1944?

A. Yes, sir.

Q. Do you belong to the carman's organization?

A. Now!

Q. Yes, sir.

A. No, sir.

Q. Did you belong to it at one time?

A. Yes, sir.

Q. When did you belong?

A. Sometime in '44 until '55.

Q. Why do you not now belong?

A. Well, one reason, they threw me out.

Q. And why did they throw you out?

A. Because I worked in '55 during the strike.

Q. When did the 1955 strike occur, what part of the year?

A. The 16th of March, I believe, was it the 16th?

Q. How long did it last?

A. 58 days.

Q. You say you worked during the strike?

A. Yes, sir.

Q. At Boyles?

A. Yes, sir.

Q. After the strike was over, could you have remained in the union?

A. I don't think so.

Q. I believe you said they kicked you out?

A. Yes, sir.

Q. Did they tell you why?

A. Because I worked during the strike.

Q. After the strike was over, Mr. Padgett, would you tell the Court what, if anything, happened to you on the job which grew out of the fact that you worked during the [fol. 4] strike?

A. Well, about everything that could happen to a man, I guess.

Q. Now, just in your own way and your own words, just take your time, and tell the Court what happened, he wants to find out about this.

A. Well, the first thing happened when we came back, every day when we would go to eat lunch, the whole bunch, I will say 35 or 40, would group up around us when we were eating. Some threw firecrackers down where we were eating, and mill around us while we were eating, disturb us while we was eating, call us this and that, and booed us.

Q. What did they call you?

A. Scabs, and boo us, and go on at us and pester us. They done that several days at dinner, and then when we would have to go get material, they would chunk us on the way and back.

Q. What do you mean, chunk you?

A. Throw rocks and nuts.

Q. Now, when you say "they", who do you refer to?

A. Well, you hardly knew who done it, the men was working, but you wouldn't see them, hear the rocks when they would come close to you.

Q. Well, I understand that. You said 35 or 40 men would gather around you at once—what men were they?

A. The men that belonged to the organization that was out.

Q. You mean they were employees of the L. & N. who belonged to the union and who went out during the strike?

A. Yes, sir.

Q. What else happened?

A. Well, I told you about this chunking.

[fol. 5] Q. Yes, sir.

A. And one time I was working down on the steel gang, working on a hose, somebody throwed a three-quarter nut at me, and I had a wrench up in my hand, had it up about like this. This nut came along and hit this wrench and knocked it out of my hand, and the wrench and the nut both hit the car. If it had of hit me, if the nut had of hit me, I imagine it would have killed me. They stole all my tools, tore up my tool box, they cut up my clothes, throwed them out of the locker, poured oil on them, creosote, drove pegs in my locker, keyhole where you unlock it.

Q. How many times did they get into your locker and damage your clothes?

A. About three or four times, I don't remember just how many times.

Q. All right, Mr. Padgett, anything else?

A. Not too long—that was right after the strike—about three or four months ago—

Q. You mean 1957?

A. Yes, sir, I was sent to the train yard in a reduction in force and some of them taken some old coil and put—

Q. Wait a minute, Mr. Padgett, I didn't catch that, they took what?

A. Oil, you know what you oil boxes with.

Q. Oil waste?

A. No, sir, poured it on big piece of paper, just took this big piece of paper and laid it over my lunch bucket where, you know, the oil would run back in my lunch.

Q. It was the grease that you use then?

A. Yes, sir, oil.

Q. That was in the Fall of 1957?

A. Yes, sir.

[fol. 6] Q. Anything else you want to relate?

(No answer.)

Mr. Eldred: I think you have about covered it. You may ask him.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

G. A. BAKER was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address?

A. G. A. Baker, Center Point, Alabama.

Q. Are you employed by the Louisville & Nashville Railroad Company?

A. Yes, sir, I am.

Q. In what capacity and where?

A. As a helper in the train yard, oiling.

Q. At what place?

A. Boyles, Alabama.

Q. How long have you been employed at Boyles in that capacity?

A. Since 1940.

Q. Do you belong to the bargaining union which is the official representative of your craft?

A. No, sir, I do not.

Q. Did you belong at one time?

A. I did.

Q. When did you belong?

A. Back in '40, 1940, after I went to work for the company.

Q. When did you drop out, if you did?

[fol. 7] A. Some time in—well, let's see, I went in the service, I came back out of the service in 1945, I went back into the union, was in there best I remember something like three months, and dropped out.

Q. In what year?

A. '45.

Q. Now, later on, did you make an effort to get back into the union?

A. Yes, sir.

Q. What were you told with respect to what it would then cost you?

A. Well, I went to the local chairman and asked him what it would cost me to get back in, and he told me it would cost me \$20. He said you never did belong, did you, and I said yes, I did at one time. He said, oh, well, says it will cost you \$30.

Q. Now, Mr. Baker, did you work during the 1955 strike?

A. Yes, sir.

Q. Tell the Court in your own words what happened to you on the job after that strike was over?

A. Well, after I came back in there, the men, they would throw at me, holler scab at me. Every time my back was turned, somebody would try to knock me in the head with a rock or nuts, rivets. (Indistinguishable.)

Q. Wait a minute, don't talk so fast. You say when you went to the bull pen?

A. Yes; to get material have to use.

Q. All right, what else happened?

A. They refused to talk to you, wouldn't speak with us.

Q. What about lunch time, did you have any union employees of the railroad gang around you while you ate your lunch?

[fol. 8] A. No, sir, I never did. On the job where I was working, they never did gang around me, but they ganged me while at work one time.

Q. All right, now, did you have any trouble getting in or out of the place of work after the strike was over?

A. Well, yes, one afternoon after work, started home, got out to my truck, my tire was cut off it.

Q. Had that tire been in good condition when you drove to work that morning?

A. It had.

Q. Was it a fresh cut in it?

A. Yes, it was.

Q. Then tell what happened?

A. Well, I looked at the tire, saw it was ruined, and I decided to drive on outside the gate. So, as I started out the gate, they was lined up on both sides.

Q. Now, who was lined up?

A. The men that stayed out, the union men that stayed out during the strike.

Q. You mean railroad employees who were out during the strike?

A. Yes. They was lined up on both sides of the gate, hollering at me, looking like daring me. I pulled on outside and stopped and got out of the truck, but no one bothered me after I got out of the truck, on the outside. My wife came along in a car, I got in the car with her, we went over to the garage to get a mechanic to come back and change the tire, left the truck sitting there. When we got back the truck was turned over.

Q. When you went to get help for your truck, how many union employees of the railroad were there at the gate where your truck was?

[fol. 9] A. I couldn't truthfully say but there was—

Q. Would you say about how many, Mr. Baker?

A. At least 30 or 35 hanging around the gate and sitting in their cars on the inside.

Q. You know why your wife was there to meet you?

A. Yes, sir.

Q. If you know why she was there, tell the Court why?

A. The Sheriff down in town, she talked to him about it, about having a witness if anything should happen, and he advised her to park the car up on the side of the hill where she could oversee the shop, and if anything happened, she could be a witness to what happened.

Q. Did you have any trouble with your tools?

A. Yes, sir, my tool box was broke into, tools taken out of it, the locked throwed away.

Q. Anything else?

A. Well, some time after that I had a barn out where I am living now that burned.

Q. A barn?

A. Yes, that was burned down.

Q. You know who burned it down?

A. No, sir, I don't know who, but I do have the names of some boys that was inquiring where my barn was the day before the barn burned that night.

Q. Was it burned at night or day?

A. At night.

Mr. Eldred: You may ask him.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

[fol. 10] SIMON DURANT was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name.

A. Simon Durant.

Q. Where do you live?

A. 3402 28th Avenue North, Birmingham, Alabama.

Q. By whom are you employed?

A. L. & N. Railroad.

Q. In what capacity?

A. I am a laborer now.

Q. Where?

A. Boyles.

Q. How long have you been a laborer at Boyles?

A. Ever since '50—let's see, '48, I believe. I was boilermaker helper until 1948 and cut back to a laborer.

Q. How long were you a boilermaker's helper?

A. 31 years.

Q. From 1923?

A. Yes, sir.

Q. Do you belong to the union organization representing the boilermakers?

A. No, sir, I do not.

Q. Have you ever belonged to that organization?

A. No, sir.

Q. Did you work during the 1955 strike?

A. Yes, sir, I did.

Q. Did you have any trouble afterwards?

A. Yes, sir.

Q. Will you tell the Court about it?

[fol. 11] A. After the strike, I was ordered to go back to my inspector job that I held before the strike. I was kind of janitor and cleaned up the oil house and paint shop and around. So, I went to the paint shop first thing that morning. That's what I usually do every morning. I went in there, all the painters and everybody in there, they weren't working, they just stood around the walls I don't know what all they had, had sticks and something heavy in their hand.

Q. Now, were they employees of the railroad?

A. Yes, sir.

Q. Were they union employees?

A. Yes, sir.

Q. Were they men that went out during the '55 strike?

A. Yes, sir.

Q. All right, go ahead.

A. They didn't say anything to me, but they just stood around just like they wanted to—look like they just said if I just would, I would do something to you, but they didn't do anything to me that morning, didn't say anything to me. They were all before the strike very friendly, I thought. Of course they didn't show any sign of being friendly to me after the strike whatever. So, I done my cleaning and went out, and of course I didn't have any trouble with them that morning.

In the afternoon I was supposed to go to the wheel shop to clean up, and when I started in the door, this lead man told me, don't come in there. And I kind of hesitated, he told me don't come in there, I couldn't work in there no more. So, my foreman was over to the next building. I went over there and told him about it, and he told me how come, did he tell you why, and I said no, he didn't tell [fol. 12] me the why. So, he took me and said come on, let's go over there. We went over there and he spoke to this

fellow, I don't know what he said to him, but anyway he told me to come on in there and do my work like I had been doing.

Q. That was your foreman told you?

A. Yes, sir.

Q. Who was this other man you are talking about?

A. Mr. Jim Wade.

Q. Is he a union employee?

A. Yes, sir.

Q. A man that went out on the '55 strike?

A. Yes, sir. So, after he told me to do my work, they seemed to have been so desperate I was afraid to take a chance because it looked like all of them was just desperate against me, and I told him I appreciate what you said, but I think I should take this up with the Master Mechanic or somebody more in authority where if something would happen, they would know about it. He said yes, I guess that is the thing to do. So, I went to the Master Mechanic about it. He asked me did they give me any reason for saying not to come in there, and I told him, no, sir. He said what time do you usually go in there, and I said the afternoon. He said well, you go back in there the same time you usually go in there, and he said don't say anything to anybody, just do your work. Of course, I did.

Every time I would go in there, they would tell me I wouldn't be there long, they were going to get my job, they were going to see to me not having a job.

Q. Who was it said that?

A. Mr. Jim Wade.

Q. He was a union man?

A. Yes, sir, said he was going to see to me not having a [fol. 13] job, that I wouldn't be there but a few more months. I continued to do my work. All the time I would go in there, they would have something to say, would be saying something about he is just here for a few days, he won't be here long. I didn't pay any attention to that.

The next morning, I went to the paint shop, the first place I went, this little man, he called me in the office, he said "Simon, come in here a minute." I went in the office and he said shut the door, and he said now, understand me good, I haven't got anything against you, he said, but these

fellows say you can't work in here no more, said you worked during the strike and they wouldn't stand for me to work in there. I said, I told him then, I said, well, this is my job, and I have to do something about it, I just can't walk off my job, I have to see somebody in authority.

So, I went back to this same man, the foreman, and sent me back to the master mechanic. It happened the travelling master mechanic was there at the time and he told me that they didn't have no authority to tell me not to come in there, said they had supervisors to tell us what to do.

Q. So, you continued on your job?

A. Yes, sir, I continued on my job.

Q. Now, Simon, while you were working after the strike was over, was anything ever thrown at you?

A. Yes, sir, we were—I think they got so desperate until the Master Mechanic decided he would move me out of this place to another job. Of course, we had to go about, I would say, about two blocks or a little better than two blocks to my job every morning, and there would be about fifteen or twenty or twenty-five stationed at that place every morning, just two of us together, and they would [fol. 14] throw one inch bolts—I mean one inch nuts, and seven-eights nuts and everything after us every morning. Finally, one morning I guess he would have hurt me but the nut hit the ground before it hit me, hit me right up on the shoulder there. I had been reporting so much that I didn't say anything about it, because it didn't hurt me too bad.

But after that, we had to almost walk with our backs turned the way we were going, you know, and looking toward them, because they would just chunk at you and then dodge, you couldn't identify anybody. They would chunk at us every morning but we kept our eyes on them and they didn't get a chance.

Q. Now, Simon, last December, that is December of 1957, was any remark made to you or in your presence about holding your job?

A. Yes, sir, up in my locker room, since this letter has been out, they would never tell you anything, but they always talking where you could hear it, as soon as this injunction is mortified, we will get all the scabs, we will get all the scabs. They said that on the 2nd of January, I

heard a gang of them saying the same thing, on the 2nd of January, said, as soon as this injunction is dissolved, we are going to get all the scabs.

Q. Simon, you mean they would make those remarks in your presence—were you able to identify whether they had worked or not worked during the strike?

A. None of them had worked.

Q. How did you determine that fact?

A. Well, I know all of them personally.

Mr. Eldred: I believe that's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

[fol. 15] SAM JONES was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Give the Court your name and address.

A. Sam Jones, 1411 Appalachee Street, Birmingham, Alabama.

Q. Are you employed by the L & N. Railroad?

A. Yes, sir, I is.

Q. Where and in what sort of a job?

A. Birmingham, Alabama, carman.

Q. How long have you been a carman there?

A. '36.

Q. Prior to 1936, did you have a job with the railroad, and if so, what?

A. 1921, laborer to '22, helper from '22 to '36.

Q. So you have been continually employed by the railroad since 1921?

A. That's right.

Q. Do you belong to the union organization representing the carmen on the L. & N.?

A. No, sir.

Q. Did you ever belong to that organization?

A. No, sir.

Q. Did you work during the 1955 strike?

A. Yes, sir, I did.

Q. After that strike was over, will you tell the Court what happened?

A. It was rough going. After the strike, we come in, coming, you know, from where I live, it would be South of the shed, these men would be upstairs looking out the window [fol. 16] down. They would say there comes that scabbing so and so, we are going to kill him, and says they got nine days to work, saying if they wants to work they will pay us fifty dollar fine for working and fifteen or twenty five dollars to join.

Q. What else, Sam?

A. On the job at the pit where we worked, where we put wheels under cars, they would come around there as though I was a gorilla or something in there working, that was during work hours.

Q. Wait a minute, I didn't understand you, do what?

A. They would yell around the pit though as if I was some varmint or something in the pit, and they would act as if it was the last person they would see. Then they would go a distance from that pit and throw stones and nuts against it, and they would point me out and say we are going to kill him. That was time and time again, and at noon-time when we would be eating lunch, there would be 75 or 80 or 100 men.

Q. Now, were they employees of the L. & N.?

A. They was employees of the L. & N.

Q. Were they employees that worked during the strike?

A. That's right, they had their "58-Day" buttons on.

Q. What do you mean by that "58 Day" buttons?

A. Well, now, I just couldn't tell you what they meant.

Q. Is that the button that the men wore that went out on the 58 day strike?

A. That's right. And then coming to and fro from home, there would be a bunch between the tractor called 3 and 4—I would come up between 2 and 1. There would be stones throwed against that, just almost like times like hail or something falling, but, you know, we would dodge and I would go report it, and we was advised not to bother them,

[fol. 17] just go on. It was miserable. Can't nobody witness what it was but the ones that were there.

Q. Sam, did you ever find anything hanging near the car shed?

A. Oh, yes, sir, had little dummies strung up on the North end of the car shed with a line running across it, little dummies hung up there by the head and just point out that is what they are going to do with the scabs.

Mr. Eldred: You may ask him.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

* * * * *

N. L. PADGITT was recalled as a witness by counsel for the plaintiffs, and was further examined and testified as follows:

Redirect examination.

By Mr. Eldred:

Q. Mr. Padgitt, I will ask you if you observed whether the conduct toward you that you described was carried out against any other employees down in the Boyles Shop during this same period of time you testified about?

A. Yes, sir.

Mr. Eldred: That's all.

G. A. BAKER was recalled as a witness by counsel for the plaintiffs, and was further examined and testified as follows:

Redirect examination.

By Mr. Eldred:

Q. Was the same sort of conduct meted out to other men [fol. 18] who worked during the 1955 strike as you have described occurring to yourself?

A: Yes, it was. One occasion I particularly recall a buddy of mine went out, I went out just ahead of him one evening. He had a Chevrolet, '56 Chevrolet almost brand new. As we went out the gate, they was a couple of boys throwing rocks through the back glass and busted it all to pieces.

Q. That was the gate from the shops?

A. Yes, sir.

Mr. Eldred: That's all.

SAM JONES was recalled as a witness by counsel for the plaintiffs, and was further examined and testified as follows:

Redirect examination.

By Mr. Eldred:

Q. Did you see the same sort of treatment given to other men who worked during the 1955 strike at Boyles as you described occurring to yourself?

A. Yes, sir, I did. One I would love to say, a man by the name of Heywood Carter, he was struck and lost lots of time by his arm being nearly broken by the same things.

Q. Haywood Carter?

A. Yes, sir.

Q. He worked during the 1955 strike?

A. That's right, he is here now.

SIMON DURANT was recalled as a witness by counsel for the plaintiffs, and was further examined and testified as follows:

[fol. 19] Redirect examination.

By Mr. Eldred:

Q. Did you see other men who worked during the 1955 strike at Boyles subjected to the same sort of treatment you received and about which you described?

A. Yes, sir.

Q. After the 1955 strike was over, did any union employee approach you about paying him any money?

A. Yes, sir.

Q. What was that about?

A. They said the local chairman, I guess it was the committeeman that approached me, and said if I would pay them \$65 wouldn't anything, they would fix it so they wouldn't use no violence on me. I know of several fellows that paid that \$65. I know one boy came and told me, asked me if they had approached me. I told him yes. He said did you pay them. I said no, I didn't pay them. He said you did right, I believe they are using more violence on me since I paid it than they did before I paid the \$65.

Q. You didn't pay the amount?

A. No, sir.

Mr. Eldred: All right, stand by.

E. E. YATES was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. State your name and where you live.

A. E. E. Yates, Corydon, Indiana.

Q. Are you employed by the L. & N.?

A. Yes, sir.

[fol. 20] Q. Where?

A. Since 1923.

Q. Where do you work?

A. Freight car department.

Q. Louisville?

A. Yes, sir.

Q. In what capacity?

A. Welder.

Q. Is that in the car department?

A. Yes, sir.

Q. How long have you been in the carman's craft?

A. Since 1933.

Q. And prior to that time what was your job with the railroad?

A. Machinist and apprentice.

Q. I believe you said you started working for them in 1923?

A. Yes, sir.

Q. Do you belong to the Carmen's organization?

A. No.

Q. Did you at one time belong to the organization?

A. At one time up until about 1948 or '9.

Q. Now, did you work during the 1955 strike?

A. I did.

Q. After the strike was over, what sort of treatment was accorded you on the job by any of the employees?

A. Well, what they call the silent treatment and intimidating remarks, and threatening to throw us out when they got a union shop and various other things.

Q. Were you ever surrounded by a group of men who had gone out during the 1955 strike?

A. I was a time or two, yes.

Q. Did you know they were the men who had gone out [fol. 21] during the strike?

A. I did.

Q. What did they call you, Mr. Yates?

A. Well, scabby SOB's and everything you could think of.

Q. Was anything ever said to you about what would happen after they got a union shop?

A. They would throw me over the fence, which meant they would have me fired.

Mr. Eldred: I believe that's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

J. B. QUIGGINS was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Will you tell the Court your name?

A. J. B. Quiggins.

Q. During the 1955 strike were you employed by the L. & N. Railroad?

A. Yes, sir.

Q. In what capacity?

A. Master Mechanic.

Q. Where?

A. Boyles, Alabama.

Q. Did you work at Boyles as Master Mechanic after that strike was over?

A. Yes, sir.

Q. Mr. Quillins, do you know what the situation was at Boyles, as between the union employees and the railroad [fol. 22] employees who had worked during the strike?

A. I was well aware of it, yes.

Q. Will you tell the Court what you observed and what came to your attention?

A. There was very little of it that I observed personally, but all of the cases of violation and so forth came to me by the men who were affected.

Q. Were they reported to you by the men?

A. Yes, sir.

Q. Were those reports many or few?

A. Many—daily.

Mr. Lyman: Your Honor, we haven't objected as we went along, but this is very obviously pure hearsay, and we object.

By the Court: Overruled.

Q. Can you tell the Court what type situation was called to your attention, what type of complaint was made or what did the complaint bear on?

A. The men who had worked during the strike complained daily because they couldn't use the wash rooms without threats and so forth. In one instance one of them was severely beaten which I didn't see, but statements were taken in the case. However, that was the end of it as far as I know. Men complained daily and made complaints and claims as to their clothes being destroyed and tools.

Q. Few or many men?

A. Many of them, many of them kept their clothes in their automobiles parked in front of the office, and wouldn't

attempt to use the wash rooms. There were many of them in the train yard after dark, those on night assignments wouldn't finish their day's work. They would claim they had things thrown at them and shot at with slingshots, and they reported those cases to me, daily.

[fol. 23] Q. Any of those missiles turned into your office?

A. Yes, I couldn't say exactly whether they came from the train yard or the car shop, but many of them were nuts with rawhide and rope strings tied on them that had been hurled.

Q. These two steel balls, do they look like any of the missiles reported to your office as being shot at the men?

A. I have seen some like that. Most were smaller, sling-shot type, others that had the rawhide and string on them were nuts from an inch to an inch and a quarter, I would say.

Q. Could you give the Court some idea about the number of men at Boyles that worked during the strike?

A. Various crafts, some two hundred.

Mr. Eldred: That's all.

Mr. Lyman: No questions.

Cross examination.

By Mr. Sandidge:

Q. After the strike, did you have to separate the union and non-union men?

A. I certainly did.

Q. Tell the Court about that.

A. Well, there was so much of the dissension and feeling was so high among them that we did move them and tried to keep them segregated, that is, keep the men that worked during the strike away from the men that did not work during the strike.

Q. Why was that?

A. That was expediency, in order to get the work done.

Q. Why was it necessary?

A. Well, these same men would come in and claim they were thrown at, while on the job, and we had no cooperation [fol. 24] from the other men.

Mr. Sandidge: That's all, thank you, sir.

J. C. LANEY was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and where you live?

A. J. C. Laney, I live at Birmingham, Alabama.

Q. Are you employed by the L. & N. Railroad Company?

A. Yes, sir, as locomotive engineer.

Q. Were you so employed by that company in the Spring of 1955?

A. Yes, sir.

Q. Did you work during the 1955 strike?

A. No, sir.

Q. Are you a member of the Brotherhood of Locomotive Engineers?

A. Yes, sir.

Q. Were you a member of that organization during the 1955 strike?

A. Yes, sir.

Q. At that time, did you hold any official position with that union?

A. Yes, sir.

Q. What was that?

A. I was local chairman and legislative representative.

Q. Do you hold any official position with that union today?

A. Yes, sir, I am local chairman and legislative representative.

Q. Now, did you return to work after the conclusion of [fol. 25] the 1955 strike?

A. Yes, sir.

Q. Did any of your work take place within the yards and adjacent to the Boyles shops?

A. Yes, sir.

Q. Did you observe the situation at Boyles following the conclusion of the strike with reference to how the union employees who walked out during the strike got along with the men who worked during the strike?

A. Yes, sir.

Q. Will you tell the Court what you observed?

A. Well, I don't know just where to start, there was so much that happened.

Q. Just what you can think of, Mr. Laney?

A. Well, after the strike was over and we went back to work, I was sitting on the engine one afternoon, and I saw an employee with a slingshot, crawling along, hiding down behind the shadows, stalking some of the oilers that had worked during the strike, and he attempted to slip up on them and they saw him and got away and he went on about his work. Later on, he slipped up on some and got a shot at them, and he just barely scratched one of them, didn't hurt him too bad.

Q. What was he shooting in the sling?

A. Steel balls.

Q. Steel ball anything like these two I am holding up before you?

A. Yes, sir.

Q. Go ahead, tell the Court what else you know?

A. After the strike, the things got so rough that in the train yard we would go to work in the afternoon and about dark, the oilers and inspectors would disappear and we [fol. 26] didn't know where they were going, and come to find out when it got dark these people got to shooting at them and just ran them off. I observed in one case an employee getting a thermos bottle of another employee that had worked during the strike and urinating in the bottle. I also observed taking their lunch, opening the bread up on the sandwiches and putting all kind of vile objects in it.

I observed a committee that was appointed or they operated called the flower committee. They would go around and take up collection for flowers, and the people they would get the flowers for, it was implied at that time there was nothing wrong, but they would need flowers, and they used the money or at least they told me when I was solicited for donations that they would use the money to hire somebody—some goons to do the work for them. I observed various employees get their property damaged, automobiles damaged, acid throwed on them, windshields damaged with throwing objects against them.

Q. Mr. Laney, do you think that feeling that existed between the men who worked during the strike and those that didn't, union men that walked off, do you think the feeling demonstrated by the actions you have told about has been cured or whether it still exists as of today?

A. It exists today. They are very careful because at first they were not, and after some of them were apprehended and disciplined, they become very careful about it and some of them have eliminated it, but it is a definite feeling against these people, that is very strong.

Q. Exists today. Incidentally, Mr. Laney, are you the man who exposed or helped to expose the run out of Birmingham that communist, Summers, from your union organization?

[fol. 27] A. Yes, sir.

Mr. Eldred: That's all.

Cross examination.

By Mr. Kramer:

Q. Mr. Laney, you have testified in another case involving the union, have you not?

A. Yes, sir.

Q. That was in Birmingham where you live?

A. Yes, sir.

Q. In that case you testified against the union on totally different grounds from what you are testifying today?

A. I am not testifying for or against the union shop.

Q. In the other case in Birmingham, didn't you testify for the people seeking to enjoin a union shop agreement?

A. I testified to the best of my knowledge the questions and facts, the questions answered it to the best of my knowledge.

Q. On whose side did you testify?

A. I testified in the Court, on the side of the Court, I hope.

Q. Did you testify on behalf of those who were seeking to enjoin a union shop agreement on the Coast Line?

A. I testified to the truth. In whose behalf it favored, that's up to other people to decide.

Q. Who asked you to testify?

Mr. Eldred: Just tell what side you appeared for.

The Witness: Mr. Price.

Q. Who is Mr. Price?

A. He was assisting with the Coast Line employees that were opposed to the union shop.

Q. What other position did he hold?

[fol. 28] A. I don't know.

Q. You are sure you don't know?

A. He is an engineer on the Atlantic Coast Line.

Q. What other position did he hold?

A. I don't know.

Q. You are sure you don't know, Mr. Laney?

A. I am sure I don't know.

Q. Mr. Laney, you are a locomotive engineer?

A. Yes, sir.

Q. That is one of the so called operating crafts?

A. Yes, sir.

Q. And you were testifying in the case in Birmingham and tried to enjoin a non-operating union shop, is that right?

A. Yes, sir.

Q. And you know that the people in this case who are trying to resist a union shop are also the so called non-operating employees?

A. Yes, sir.

Q. You, yourself, did not work during the L. & N. strike?

A. No, sir.

Mr. Kramer: I have no further questions.

Redirect examination.

By Mr. Eldred:

Q. Did these acts you described occur with respect to shop craft employees or operating employees?

A. Shop craft employees.

Mr. Eldred: That's all.

Mr. Sandidge: No questions.

[fol. 29] HEYWOOD CARTER was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Will you tell the Court your name and address?

A. Heywood Carter, 641 E. Burnett.

Q. Are you employed by the L. & N. Railroad?

A. Yes.

Q. Were you so employed in 1955?

A. Boyles, Alabama.

Q. Boyles, Alabama, what sort of job did you hold?

A. Oiler, train yards.

Q. Do you belong to the firemen and oiler's union?

A. No, sir.

Q. Is that the union that represents your craft?

A. No, sir, that's not the union.

Q. What is the union that represents your job, if you belonged to the union, what union would you join?

A. The Brotherhood, I mean the Brotherhood.

Q. Did you say you are an oiler in the yard?

A. Yeah, oiler in the yard.

Q. You are an employee in the car department, you are what is called a carman?

A. Carman helper.

Q. Do you belong to the union now?

A. No, sir.

Q. Did you ever belong to it?

A. Used to belong to it.

Q. When did you quit belonging to it?

A. In '45.

Q. Did you work during the 1955 strike?

[fol. 30] A. Yes, I worked.

Q. Heywood, what happened to you after that strike was over, when the L. & N. came back to work?

A. Well, they throwed at me every day and set a shack afire.

Q. Wait a minute, what?

A. Set one of the oiler shacks afire and burned it down.
I was in the shack that evening.

Q. What else happened to you?

A. The evening, just before night, they started ganging up and started throwing at me.

Q. Who started ganging up?

A. Switchmen and ear inspectors.

Q. Were they men that worked during the 1955 strike?

A. No, they didn't work.

Q. How do you know they didn't work?

A. They was out.

Q. They were out during that time. Now, would they throw things at you?

A. Threw rocks and bricks.

Q. Anything else happen to you, Heywood?

A. I was going home one evening, me and—I done went out, waiting on my nephew, and I was out at the front gate and tried to turn my ear over.

Q. Who tried to turn your ear over?

A. Some of the boys who was out on the strike.

Q. Some of the L. & N. employees out during the strike?

A. Yes.

Q. Anything else now you want to tell about?

A. I guess that is about all.

Q. Anybody try to collect any money from you after the strike was over?

A. No, sir.

[fol. 31] Mr. Eldred: That's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

JAMES E. JONES was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Will you tell the Court your name and address.

A. James E. Jones, 744 45th Place, Birmingham, Alabama.

Q. Are you employed by the Louisville & Nashville Railroad?

A. I was.

Q. During the 1955 strike, were you employed by the L. & N.?

A. Yes, sir.

Q. Where?

A. Boyles, Alabama.

Q. What kind of a job did you have?

A. Carman's helper.

Q. Did you belong to the carman's union at that time?

A. No, sir, I didn't.

Q. After the strike was over, tell about what happened to you with relationship to the employees who walked out during the strike?

A. I wasn't employed, I only went in to work after the strike, then I had to go out, but I had to work extra board, and I was called out one morning, and they told me on the phone I would have a five day assignment. When I got out there, I only worked that day, and as Carter spoke a few [fol. 32] minutes ago when they tried to turn the car over, I was in it.

Q. You were in the car with Heywood Carter?

A. Yes, sir. Two employees came out and discovered that we were out there, we were sitting in the car, waiting on another fellow, too, I was in the car. When they discovered we were sitting down there, there was a bunch of men at the gate, to get after the men that worked as they came out.

Q. Now, these men at the gate, do you know whether they worked or not during the 1955 strike?

A. They did not work, and when they found out that we were there, they came out. Well, I told him to start his motor, which he did, and before he could pull away, one snapped the door open, and I had a knife, was all I had. Well, I didn't want them to kill me, but that is what they seemed to want to do. One reached under his sweater and said I will make you eat that. By that time, Carter was about to pull off, and they tried to catch the back end of the car and turn it over, but the car was a little too heavy, I

expect, so we got away, but I reported that. Another incident, during the strike—

Q. I am not talking about during the strike now—only what occurred after the strike was over. Anything else now after the strike?

A. Well, as I aforesaid, I didn't work too much after the strike.

Mr. Eldred: That's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

[fol. 33] HERBERT POYNTER was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Give the Court your name and address.

A. Herbert Poynter, Keany, Kentucky.

Q. Keany, Kentucky is near Corbin?

A. Yes, sir.

Q. Are you employed by the Louisville & Nashville Railroad Company?

A. Yes, sir.

Q. In what capacity and where?

A. I am in the car department, freight car department.

Q. At Corbin?

A. Yes, sir.

Q. Do you belong to the carman's union?

A. Not at present.

Q. Did you belong to that union at one time?

A. Yes, sir.

Q. When did you belong to it and when did you cease to belong to it, and why?

A. Well, I belonged to it from the time it was organized up until September, '56.

Q. Why did you cease to belong to it in September of 1956?

A. Well, they never did nothing about—I worked during the strike, they went on and collected the dues until about eighteen months after the strike happened.

Q. Then what?

A. Then they fined us because we worked during the strike. Of course, we didn't pay our fine, they expelled us [fol. 34] from the union.

Q. Let's see if I understand, for eighteen months after the strike they permitted you to remain a member by paying your customary dues?

A. They collected their dues, yes.

Q. Then they levied the fine, and what was the amount of the fine?

A. \$290.

Q. Was that at the rate of \$5 a day for each day you worked during the strike?

A. Yes, sir.

Q. All right, did you pay the fine?

A. No, sir.

Q. And were you expelled from the union?

A. Yes, sir.

Mr. Eldred: That's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

SIMON VANDERPOOL was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address, please.

A. Simon Vanderpool, Corbin.

Q. You are employed by the Louisville & Nashville Railroad?

A. Yes, sir.

Q. In what capacity?

A. Work in the car shop, carman.

Q. At Corbin?

A. At Corbin, yes, sir.

[fol. 35] Q. You belong to the carman's union?

A. Not right now, no, sir.

Q. Did you belong to the carman's union in 1955?

A. Yes, sir, I did.

Q. How long have you been a carman?

A. Well, ever since 1919.

Q. Did you work during the 1955 strike?

A. Yes, sir, I did.

Q. After the strike was over, how long did you remain a member of the union?

A. Something near eighteen months.

Q. Then what happened?

A. They expelled us from it, fined us \$5 a day and expelled us from the union.

Q. They fined you \$5 each day you worked during the strike?

A. Yes, sir.

Q. Did you pay the fine?

A. No, sir.

Q. And for that reason they expelled you—all right, that is all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

E. V. CHAPPELL was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address.

A. E. V. Chappell, Corbin, Kentucky.

Q. Are you employed by the Louisville & Nashville Railroad Company?

[fol. 36] A. Yes, sir.

Q. In what capacity?

A. Car repair helper.

Q. At Corbin?

A. Yes, sir.

Q. You belong to the carman's organization?

A. No, sir.

Q. Did you belong to that union at one time?

A. Yes, sir.

Q. When?

A. I joined in 1946.

Q. How long did you remain a member of it?

A. Fall of '49.

Q. Did you work during the 1955 strike?

A. Yes, sir.

Q. As a result of having worked during the 1955 strike, will you relate to the Court, Mr. Chappell, anything that occurred to you after the strike was over with reference to your employment?

A. Well, except a few little things along the job, I didn't have so much seniority to hold a regular job, so I had to shift from one shift to another and during the time of that I have to keep up with where I was going to be working through the foreman by myself.

Q. Well, now, you say after the strike was over you didn't have enough seniority to hold a steady job?

A. That's right.

Q. What kind of work did you get?

A. Well, I worked as an extra man, car repair helper.

Q. Would that mean that you would get work from the emergency board; is that what you are talking about?

A. That's right.

[fol. 37] Q. Was that emergency board run like it should have been run, did you get the work you should have gotten from the position of your name on that board?

A. No, I would have to find out that there was men working younger than me and then I would go down and report up.

Q. And how many times did that occur?

A. Well, that happened just one time.

Q. When was that, Mr. Chappell?

A. August of '57.

Q. And you found out, let me get this clear, you found out that a man younger than you had gotten work on the emergency board that you were entitled to?

A. Yes, sir.

Q. You know whether that man that got that work was a union employee, a member of the union?

A. Yes, sir.

Q. Was he a man that worked during the 1955 strike?

A. No, sir.

Q. Has the local chairman down there at Corbin ever spoken to you since the strike?

A. No, sir.

Mr. Eldred: That's all.

Mr. Sandidge: No questions.

Cross examination.

By Mr. Lyman:

Q. When did you cease to be a member of the union?

A. Along in the Fall of 1949.

Q. The Fall of '49?

A. Yes.

Q. You haven't been a member at any time since then?

A. I joined the laborer's union once, but I didn't stay in there but about three months, something like that.

[fol. 38] Q. Did you protest about this junior man having worked in your place when you should have been called?

A. No, sir.

Q. You started to tell Mr. Eldred when you found out about it you went up to see about it.

A. Yes, sir.

Q. What did you do?

A. I asked him was there anybody younger than me working, and they told me yes, and I filled out an application reporting up for work.

Q. You did fill out an application?

A. Yes, sir.

Q. Then what happened?

A. They billed me in the yard.

Q. They did put you to work then?

A. Yes, sir.

Q. So that this one time that you mentioned, you were not deprived of work by a junior man working, were you?

A. I don't understand.

Q. You weren't kept out of work that time, were you, as it turned out?

A. Up to the first time, I was.

Q. Up till the first time?

A. Yeah, first time when they set up the extra board and late in '56, then I didn't get no work until August 7th because I was out of town, August of '57.

A. That wouldn't be because they were working somebody junior, but because you were not available?

A. I was not notified.

Q. But the situation was corrected the first time you [fol. 39] complained about it?

A. Yes, sir.

Q. And you were put to work?

A. Yes, sir.

Mr. Lyman: That's all.

Redirect examination.

By Mr. Eldred:

Q. Did you leave your name and address so you could be reached if your name came up on the extra board?

A. At the time I left, I did leave my name and address, or, the papers, you know, you fill out, but then I wasn't called for the extra board.

Q. But this occasion now, I want to be sure I understand what you are talking about, you were available and a junior man to you was working—a younger man than you was working?

A. Yes, sir.

Q. When you found out that, you reported that to whom?

A. I went to the Clerk, Car Department Clerk.

Q. Did he tell you why that had been done?

A. No, sir.

Q. But after you reported it to him, the thing was straightened out after that?

A. Yes, sir.

Mr. Eldred: That's all.

Recross examination.**By Mr. Lyman:**

Q. Had you made application for this emergency board work before you went out of town?

A. No, sir, there wasn't no extra board, emergency extra board at the time I went out of town. It was set up and then they was working when I found out about it.
[fol. 40] Q. So you got to work on it as soon as you made your application for the first time, is that correct?

A. That's right.

Q. You know, don't you, that you have to make application under the rules before you can work on the emergency board?

A. Yes, sir.

Mr. Lyman: That's all.

Redirect examination.**By Mr. Eldred:**

Q. Did they have your name at the time this younger man got the job you should have had?

A. Yes, sir, they had my name.

Recross examination.**By Mr. Lyman:**

Q. They didn't have your name on an application form, though, did they?

A. The way they do that, you don't fill out an application until you report for work, but if you don't know they are working, you don't know to go down and fill out the application.

Mr. Lyman: That's all.

D. A. LEE was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address.

A. D. A. Lee, Louisville, Kentucky.

Q. Are you employed by the Louisville & Nashville Railroad Company now?

[fol. 41] A. Yes, sir.

Q. As what?

A. Electrical apprentice.

Q. How long have you been employed by the L. & N.?

A. Since July 3, 1953.

Q. Do you belong to the electrician's union?

A. No, sir.

Q. Did you at one time?

A. Yes, sir.

Q. When did you belong to the union?

A. From the last of '53 to the last month of '54.

Q. Did you work during the 1955 strike?

A. Yes, sir.

Q. Now, after the '55 strike was over, Mr. Lee, will you tell the Court whether you had any trouble with your job, or whether anybody was run around you on your job?

A. Well, I had numbers of troubles on the job, but there was a man run around me, yes.

Q. First, tell what trouble you had on the job?

A. Well, there was quite a few things happened like these others stated, like lunch and tools in their boxes and everything, things like that happened, but this case where they run this apprentice boy around me—that is the one you are most interested in?

Q. Yes, tell us about that.

A. Well, it would be contrary to what this other lawyer told us. He said if they did amend this injunction that the company would take care of those men, you know, that did work during the strike. For them to upgrade them, the company and the union both have to agree on it, and

this was right after the strike, and this boy, they run him around me, they upgraded him, and so I went to see the [fol. 42] union official about it, it was either my local chairman or my general chairman, I don't know which, and he told me since I worked during the strike I wouldn't be upgraded. So, my dad—

Q. Wait just a minute—let me see if I understand you as you go along—you say that after the strike was over, a man was upgraded around you, was that man younger or older in seniority?

A. He was younger.

Q. Now, was he a man that worked or didn't work during the 1955 strike?

A. He didn't work.

Q. Was he a member of the union?

A. Yes, sir.

Q. And so he was upgraded. Now, you made complaint about that, either to your local or general chairman.

A. Yes, sir.

Q. And were told what?

A. That I wouldn't be upgraded because I worked during the strike.

Q. All right, what else happened?

A. I went to see my dad and told him if that is the way the company was going to treat us, I was going to quit, because I didn't have to put up with that. I was a young man, I could go somewhere else and get a job. He told me no, they have an injunction against that, and we will go up and see the head personnel man and see what he says about it. So, he got permission from his foreman and we went up to the head personnel man, Bob Strucker, at that time, and so Mr. Strucker said he didn't know anything about it, and he called our general foreman at that time, which was Mr. Divel, and he was on vacation. So, he called Mr. Hite, that is my assistant foreman up there, and [fol. 43] Mr. Hite said he didn't know anything about them upgrading a man younger than me, and said that he would straighten it out.

So, about two days, they upgraded me. They left him upgraded and they upgraded me, and the way I understand it, I couldn't be for sure, but I was told by union men that the company didn't agree with it, and so they abolished

that job I was working on, and I was sent back down and they sent the other boy down at the same time.

Q. After you had been told this by the local or general chairman, you went to management about it, and as result of that, both the other man and you were put back down.

A. No, he was still working, but they did upgrade me.

Q. I see, they did upgrade you, and then later they downgraded both of you?

A. In about three days, they abolished the job I was on and downgraded him, too.

Q. Now, have any union employees out at the place you worked made any statements to you this past year about joining the union?

A. Yes, sir, I have been asked.

Q. What did they tell you would happen if you didn't?

A. I have been told that I wouldn't get to go on seniority as an electrician if I didn't join the union, but not long after the strike, about six months after the strike—first, I went out on the strike for about a week, and I didn't know whether to work or not to work. I mean I was just a country boy, I didn't know anything about this, you know, what this was, and I hadn't been married but about a year, and I had a wife and child about two weeks old, so I just, I had to go to work.

[fol. 44] If I remember right, I went to my general chairman and asked him if we would make any money while we was out, you know, on the picket line, and he told me at that time he didn't know for sure, so I told my local chairman I would have to go to work. I went in and held my own job down for two weeks, apprentice. The first day I went in, they offered me a job as electrician, the company did, but I didn't take it, I stayed on my own job for about two weeks. They started giving us a hard way on the picket line, so I told them I would take a job as a mechanic. I worked two days as an electrician, and they asked me if I would go out and run the engine, fire on the engine, rather, and I told them yes, I would go out and fire on the engine, and I fired for two days and they put me on as an engineer. That's the reason, right after the strike, after they set this boy up around me, I didn't think the company would let them do it, but they did anyway, so I was aiming to quit, if I thought that was the way they were going to treat us.

Q. Did you try to join the union after the strike?

A. Yes, sir, they blackballed me.

Mr. Eldred: That's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

STANLEY ELLIS was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address?

A. Stanley Ellis, Route 2, Box 53, Fairdale, Kentucky.

Q. Are you employed by the L. & N.?

A. Yes, sir.

[fol. 45] Q. What is your job?

A. Carman.

Q. What sort of job do you do?

A. I am running a punch now, duplicating punch, punch material for cars.

Q. How long have you been in the car department?

A. Since '22.

Q. Do you belong to the carman's union?

A. No, sir.

Q. Did you at one time?

A. Yes, sir.

Q. When did you belong to that union?

A. When the strike was over, they let me out.

Q. You belonged to the union up until the time of the 1955 strike?

A. Yes.

Q. You work during that strike?

A. Yes, sir.

Q. Did they expel you after that?

A. Yes. Well, I never did try to get in, fined you \$50 to get back in the union.

Q. You refused to pay the fine?

A. Yes.

Q. Have you been an inspector in the car department?

A. I have been inspecting since '23, up until last year, when they had anything on the road.

Q. Now, following the 1955 strike, when you were still working as an inspector in the car department, did you miss any inspection trips that you should have had?

A. Yes, sir, I did.

Q. Tell the Court about that.

A. I did last year, they put four men out, young men [fol. 46] ahead of me, all union men.

Q. Were they men that did not work during the strike?

A. No, they didn't work.

Q. And that was last year?

A. Yes, '57.

Mr. Eldred: You may ask him.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

ALBERT W. WASHER was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address.

A. Albert W. Washer, Crestwood, Kentucky.

Q. You employed by the Louisville & Nashville Railroad now?

A. Yes, I am.

Q. Where and in what kind of a job?

A. South Louisville shops, load lugger operator.

Q. How long have you been working for the L. & N.?

A. September 23, 1936.

Q. In the car department?

A. Not all together, no.

Q. How long in the car department?

A. Approximately one year in the car department, the rest of the time in the motorized equipment department.

Q. Do you belong to the carman's union?

A. No.

Q. Did you at one time?

A. At one time, yes.

[fol. 47] Q. When was that?

A. I believe that was 1954, I belonged to the union twice in the period from the time I was employed—first time by the company union—I will say three times—the second time by the union that received the contract, now holding the contract, A. F. of L., and I was in the Laborer's, Fireman and Oilers Union then, and then I got in the Carman's Union. Why, I couldn't tell you, because I am in transportation. However, since I was out of Shop 13, Freight Car Department, I was assigned to the Car Department Union, Local 576.

Q. Now, did you work during the 1955 strike?

A. I did.

Q. Have you had any difficulty since the 1955 strike with obtaining work to which you felt you were entitled on the basis of your seniority?

A. Some. I had one occasion where my machine was broke down for approximately three days.

Q. Was that the load lugger?

A. Load lugger was broke down for three days.

Q. When was that?

A. That was in 1957. Spring of 1957, I think in April, and I was supposed to have been asked whether I wanted the boom crane operating job which was open at the time, but was not asked, but was assigned to a lift truck, and I made complaint of it to my foreman, I was going to file a time claim, and he said he would let me know about it. After approximately an hour went by, I was notified by my foreman that the committeeman of our department said I was not qualified to operate this machine.

Q. That's the union committeeman?

A. That's correct.

Q. Were you qualified to operate it?

[fol. 48] A. I was qualified and told him I had forgotten more about it than this man would ever know.

Q. Now, when your load lugger broke down, it took how many days to repair it?

A: Approximately three days, two days and a half to be exact.

Q. During the time that your machine was being repaired, are you entitled to work any job that is then open?

A. If there are any jobs open and I have the seniority to occupy those jobs, and my machine is broke down or incapacitated at the time, I am supposed to go on the job that I have the seniority to hold.

Q. As I understand it, when your machine broke down, there was a job then open for a movable Boone crane job?

A. That's correct.

Q. Did you get that job?

A. No, sir.

Q. Was it assigned to someone else?

A. Yes, sir.

Q. Was this man junior or senior to you in seniority?

A. Very much junior.

Q. Was he a member of the union?

A. Yes, sir.

Q. Was he a man that worked during the 1955 strike?

A. Yes, sir.

Q. Work or walk out?

A. No, he walked out—excuse me.

Q. That's the reason I asked you again. So, now, that there may be no misunderstanding, he did not work during the strike?

A. No, sir, he did not work.

Mr. Eldred: Believe that's all.

Cross examination.

By Mr. Lyman:

[fol. 49] Q. You say you missed out on three days work on this crane job?

A. No, sir, I did not say I missed out on three days. I missed out on the day I was supposed I would be put on this movable Boone crane.

Q. What did you do instead, did you lose work?

A. No, sir, I was put on the lift truck, which was a lower paid job.

Q: For how long?

A. For the next two days and a half.

Q. After that, where did you work?

A. Went back on my regular truck.

Q. When your machine was repaired?

A. Yes, sir.

Q. You said you were going to put a time claim in—did you?

A. No, sir, I did not, because they told me I wasn't qualified.

Q. You could have disputed that by filing a time claim, couldn't you?

A. I did dispute it.

Q. You could have disputed that by filing a time claim, couldn't you?

A. Well, I didn't know who to file it with. I couldn't get any information on the fact.

Q. You don't know how to file a time claim?

A. I never had to.

Q. That doesn't answer my question, don't you know how to file a time claim?

A. I never filed one and I don't know yet how to file one. I asked to be advised, but I wasn't.

[fol. 50] Q. I am sorry, I didn't hear you.

A. I said I asked to be advised how to file one, but wasn't.

Q. Who did you ask?

A. My foreman.

Q. Didn't he know?

Evidently he said I wasn't qualified, so I gave up—what is the use of trying to do anything when you can't get anything out of your own foreman.

Q. Your position was if you had wanted to file a time claim and had taken the trouble to file it, the agreement would have entitled you to this position, is that correct?

A. That may be so, but at the t

Q. Answer the question—is that what your position is?

A. Yes.

Q. And it was the foreman that turned you down and said you weren't qualified?

A. That's right, he said because the committeeman told him that I wasn't qualified to operate the machinery in question.

Q. So you dropped the matter?

A. I dropped it.

Q. Rather than go to any further trouble?

A. Well, I had a little trouble after that is the reason why I dropped most of it.

Q. What craft do you work in now?

A. I don't know what craft you consider us in. We are considered no craft at all, you might say. We are represented, supposedly, by a man there that, I think we are under about four or five different crafts, but we ourselves are not represented by any one craft except myself who came out of the car shops, and I was represented recently [fol. 51] by Mr. Logan Broadway there, he is the local chairman of the Carman's Union.

Q. You say you were represented by him recently?

A. Recently, yes.

Q. You belonged to them in 1954, I think you said?

A. '54, early part of '54.

Q. What kind of work were you doing then?

A. In transportation, I was a material expeditor at the time.

Mr. Lyman: I think that's all.

Redirect examination.

By Mr. Eldred:

Q. You say Mr. Snider was your foreman at the time that you didn't get this job you should have had?

A. Yes, sir, Mr. C. F. Snider.

Q. And he told you that the union representative said you weren't qualified?

A. That is correct.

Q. What was the name of the union representative?

A. James W. Murphy.

Q. And were you qualified, as a matter of fact?

A. Yes, sir.

Q. Did you have any trouble with Murphy over that?

A. Had quite a bit of trouble.

Q. What was it?

A. Well, one afternoon we came out after this incident, we come out of the shop, gate number 4, met me around

behind the bus, said you have been interfering with my business. I said now you go on away from me and leave me alone, I don't want to have any trouble with you, and I mean that. So, then I walked away from him. About a week later, the same thing happened, and I walked away [fol. 52] from him again, and the following—about three days after that, I told my foreman, the other foreman, assistant foreman, Mr. C. A. Harris, that I was getting tired of this man jumping on me when I went out of the gate, and if he didn't leave me alone, that one of us was going to leave that place, and I was damned sure it wasn't going to be me—pardon me.

So, he accosted me over that, Mr. Harris went and told this man what I said, and he accosted me over that the same afternoon.

Q. Murphy did?

A. Mr. Murphy, and he said I am going to knock your head off, and he set his lunch box down and I hauled off and clobbered him one in the mouth, and he grabbed my jacket, and I was getting ready to swing him one again when he kicked me in the groin. I still say he is yellow and I will whip any time I get a chance to whip him—still mad about it.

Q. Don't comment like that. Have you had any further trouble with him since then?

A. I haven't had a bit of trouble since, he hasn't opened his big mouth.

Mr. Eldred: That's all.

Mr. Lyman: No questions.

H. A. HARGRAVE was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Tell the Court your name and address.

A. H. A. Hargrave, 560 Lilly Avenue, Louisville.

Q. Are you employed by the L. & N.?

[fol. 53] A. I am, sir.

Q. In what job?

A. Machinist helper.

Q. Where?

A. Shop 17.

Q. Is that in South Louisville?

A. Yes.

Q. How long have you been a machinist helper?

A. Since October, '39.

Q. Do you belong to the International Association of Machinists?

A. I do not.

Q. Did you at one time?

A. Yes, sir.

Q. When did you belong to it, Mr. Hargrave?

A. From the time it was organized until '46, and then from '50 to '55.

Q. Did you work during the 1955 strike?

A. I did.

Q. Have you attempted to go back in the union since that time?

A. I have been approached, I haven't went back in, no, sir.

Q. Have you had any difficulty with being set up as a machinist?

A. Very much so.

Q. As result of that working during the 1955 strike?

A. Not from the result of working, I don't think so much.

Q. What was the trouble, Mr. Hargrave?

A. Well, the trouble was that I worked two years and one month during the war as temporary machinist, and I [fol. 54] didn't work the full four years. For that reason I didn't work the full four years, they wouldn't promote me.

Q. Has the union refused to agree that you be set up?

A. Yes, sir.

Mr. Eldred: That's all.

Mr. Lyman: No questions.

Mr. Sandidge: No questions.

Mr. Eldred: Court please, I want to get into evidence the releases that were signed by the twenty-eight plaintiffs

in this case on the payment of \$5,000 damages when the case was agreed upon, and the consent decree was entered. That was paid \$2,500 by the railroad and \$2,500 by the unions. I don't think there is any dispute about that. If the counsel for the unions will agree to stipulate, otherwise I will put Mr. Landrum on the stand and prove the release.

Mr. Lyman: We will stipulate that was done, your Honor, but we will object.

By the Court: Competency or relevancy. It may be admitted, subject to your objection of competency or relevancy.

Mr. Eldred: If your Honor please, this original release was signed by each of the 28 original plaintiffs on duplicate originals, all of them didn't sign the same document. I have here a photostatic copy of the release but it only has three signatures on it because that duplicate original was only signed by three. Now, subject to the objection as to competency and relevancy, will counsel stipulate this photostat copy may be introduced as a true copy of the release and the same type of release was signed by all 28 original plaintiffs?

Mr. Lyman: I have no objection to you substituting a photostat for the original.

[fol. 55] By the Court: I understand that counsel stipulate that this is a correct copy.

Mr. Eldred: Counsel stipulate that this is a correct copy of the release signed by all 28 original plaintiffs and pursuant to that release that \$2,500 was paid by the Louisville & Nashville Railroad and \$2,500 by the union defendants.

Mr. Lyman: That's correct.

Mr. Sandidge: We stipulate, too.

By the Court: Plaintiff's Exhibit 1.

(Exhibit is so identified and filed in the record.)

W. S. SCHOLL was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Give your name to the reporter.

A. W. S. Scholl.

Q. What position do you now hold with the Louisville & Nashville Railroad Company?

A. Director of Personnel.

Q. As Director of Personnel, do you have in your office records showing the date of certification of the six shop craft unions which operate on the L. & N.?

A. Yes, sir, we have.

Mr. Sandidge: Just one moment, were you subpoenaed to bring those records here?

The Witness: I was subpoenaed to bring a file called [fol. 56] Consolidation of Round House and Diesel Shop Facilities of South Louisville Shops.

Mr. Sandidge: Did you bring those with you?

The Witness: Yes.

Q. Do you know, Mr. Scholl, when these six shop craft unions who are here moving for modification of injunction were certified as the official bargaining representatives of the six shop crafts on the L. & N.?

A. According to our records, the electrical workers, helpers and apprentices were certified on September 29, 1943, and the others were certified on July 24, 1940.

Q. Thank you, sir. Will you tell us the number of men who were employed in the South Louisville shops just immediately before the beginning of the 1955 strike?

A. At South Louisville shops?

Q. Yes, sir, in the shop crafts.

A. According to the records furnished our office by the auditor of disbursements, which is our payrolling office, immediately before the strike there were 2,436 employees at South Louisville in the shop crafts.

Q. Do you know how many men worked during the strike, on an average—you could give the high and the low for the number of days in the strike, if you have that?

A. The way it has been furnished to us, in accordance with some Interstate Commerce Commission reporting, I believe, is on March 14th, which was the first day of the strike, there were 1,328 men working. On April 1st, the next date, there were 1,400. On April 15th, there were 1,425. On May 3rd there were 1,298. On May 10th, which was the last day, there were 1,323.

Q. Do you have the same figures for Boyles?

A. Yes. On March 10th, there were 687. March 14th, 182. [fol. 57] April 1st, 119. April 15, 185. May 3, 178. May 10, 171.

Q. Can you give me those same figures for the entire system on your shop crafts?

A. For the entire system, on March 10th, 5,255. On March 14th, 2,241. April 1st, 2,144. April 15th, 2,359. May 3rd, 2,105. May 10th, 2,179.

Q. And the first day of the strike was what day?

A. Was March 14th.

Q. Following the termination of the strike, was an agreement entered into between the carrier and the six shop craft unions with respect to the return of men to work?

A. Yes, it was.

Q. You have a copy of that agreement?

A. Yes, I have. It was signed on stencil and that is a mimeographed copy.

Mr. Lyman: This doesn't seem to be a complete contract. Exhibit A, which seems to be a part of it, isn't attached.

I might say that I didn't object at the beginning of Mr. Scholl's testimony, but it now appears that he is apparently giving statistics to tie in the testimony of all the individual employees we had here this morning. Unless some other purpose of relevancy of these facts and figures and this agreement is shown, we object to his testimony and this exhibit.

By the Court: I will overrule that.

Mr. Lyman: I further object to the exhibit on the ground

that on the face of it, it is not a complete copy of the agreement.

Mr. Eldred: Well, your Honor please, our sole purpose in introducing this is one particular paragraph which appears in it, which I shall read to the Court, it is on page [fol. 58] 2 of the agreement, and appears to be a separate unnumbered paragraph following paragraph number 5, which reads as follows:

"Immediately upon the execution of this agreement, the organizations will instruct their members to report for work at 6 A. M. on May 11, 1955, under the following conditions."

There are a number of conditions, the one I am particularly interested in and want to call to the Court's attention is (a) which reads as follows:

"All employees will be restored to service without prejudice or reprisal and with all seniority and all other rights unimpaired including all rights under group and other insurance plans."

That is the only part that is pertinent to our case, and that is the reason I wish that copy be placed in evidence.

By the Court: All right, you object to the agreement and I will sustain that. Do you have any objection to the excerpt that was read?

Mr. Lyman: I have no objection to the excerpt except it has no pertinence whatsoever.

By the Court: Overruled.

Q. Now, that excerpt that I read, is that part of the agreement which was entered into by and between the Louisville and Nashville Railroad Company and the fifteen cooperating railway labor organizations involving the settlement of the strike?

A. Yes, it is.

Q. And did those fifteen cooperating labor organizations include the six shop craft unions?

A. According to this record, it did, yes.

[fol. 59] Q. Was that paragraph that I read part of the agreement that was made following the strike?

A. Yes, it is.

Q. Mr. Scholl, at the present time is it necessary for the Louisville & Nashville Railroad to maintain special police at any points upon its system by reason of the matters which occurred during and after the 1955 strike?

A. Yes, sir, it is.

Q. Tell the Court about that, if you please.

A. Right after the strike, it was necessary for us to maintain special police at practically every terminal on our system. At the present time we have been able to reduce that to men are escorted to work or watched coming to and from work on only two terminal points on the system at the present time.

Q. Where are those terminals?

A. I rather not answer that, because then it says where they are not, and I don't want more trouble tomorrow morning.

Q. I see. I will withdraw the question.

A. If you please.

Q. As Director of Personnel, are you in charge of all personnel for the entire Louisville & Nashville Railroad Company system?

A. We maintain most personnel records concerning grievances and so forth.

Q. Will you tell the Court whether following the close of the 1955 strike you have had few or many complaints which have reached your office, of abuse or mistreatment of employees who worked during the strike by men who did not?

A. We have had many. As a matter of fact, following [fol. 60] the strike we added an additional position of Assistant Director of Personnel, and since that time I have devoted a great deal of my time to running down these complaints, making investigation of them and assisting federal authorities and so forth, yes.

Q. Have you in your capacity as Director of Personnel received many expressions from the employees of the railroad with respect to continuation of the injunction in the Wright case without being modified?

A. Yes, sir, we have, even since we began talking about the union shop, that is, the national officers of the organization came on the property last year, we have had many expressions from the employees, individually coming into the office, calling on the telephone, and by petition and cards and so forth, asking us to do what we could to maintain the injunction. We have received, I can't say the exact number, but petitions from over two thousand employees, and this morning there was delivered to my office, I have them here in the court room, about eight hundred cards signed by shop craft men, and about four hundred signed by clerks, protesting any change.

Q. Protesting any change in the injunction in the Wright case?

A. Yes, they say they are opposed to any change or modification in the injunction in the O. V. Wright case.

Mr. Eldred: I believe that is all.

Cross examination.

By Mr. Lyman:

Q. Mr. Scholl, do you know of any other major railroad in the country that does not have a union shop agreement in effect?

A. I have my troubles with the L. & N., sir, I don't know about the other railroads.

[fol. 61] Q. What is the answer to the question now, that you don't know?

A. I have heard that most other railroads have union shop agreements, yes.

Q. Do you know of any other major railroad that does not have one?

A. I represent the Louisville and Nashville Railroad Company, and I don't know, sir.

Mr. Sandidge: Your Honor, object on the ground it makes no difference what any other railroad has.

By the Court: Overruled, I don't know that it makes any difference.

The Witness: I could put it this way—

Q. You could answer the question yes or no, Mr. Scholl.

Mr. Sandidge: He can answer the question, your Honor—your Honor he can say yes or no, and of course he can explain his answer.

Mr. Lyman: Let's have an answer yes or no first.

The Witness: Will you repeat the question.

Q: Do you know of any other major railroad in the country that does not have a union shop agreement?

A. I do not, no.

Q. Mr. Scholl, you gave us figures for the employees that were working at these various points, South Louisville Shops and Boyles, at various dates during the strike, and also figures for the system. Do those figures include people that were hired after the strike commenced?

A. These were people who were on our payroll on these particular dates. I would assume that they were people who were hired after the strike commenced, yes.

Q. Any that were hired after it commenced would be reflected in these figures?

A. That's true, yes.

[fol: 62] Q. You know for a fact whether or not there were people hired after the strike commenced in the various crafts?

A. In the shop crafts, there were relatively few. I would say very few.

Q. You have any figures on that?

A. No, I haven't.

Q. You mentioned the dates on which these organizations were certified, Mr. Scholl. You mentioned the International Brotherhood of Electrical Workers as having been certified in 1943, and all the others in 1940. Had the company bargained with any or all of these organizations at some previous time or times for these crafts?

A. You are going back before my time. I don't know in the shop craft.

Mr. Lyman: That's all.

Redirect examination.

By Mr. Eldred:

Q. Can you tell us, Mr. Scholl, how many employees the company now has in the six shop crafts over its entire system, as of today?

A. As of today is something I can't do, we don't have the figures as of today.

Q. In your best judgment, how many do you have?

A. I would put it at about 4,700.

Mr. Eldred: That's all.

J. W. RITTER was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

[fol. 63] Direct examination.

By Mr. Eldred:

Q. Give the Court your name and address.

A. John W. Ritter, 4000 South Brook.

Q. Are you employed by the Louisville & Nashville Railroad Company?

A. I am.

Q. As what and where?

A. Electrician, in Shop 17 now.

Q. Prior to February 17, 1947, were you employed in the South Louisville roundhouse as an electrician?

A. I was.

Q. During the 1955 strike, how many men were employed in the South Louisville roundhouse, in all the crafts?

A. I imagine close to seventy, sixty or seventy.

Q. And how many of those men, what percentage of them worked during the 1955 strike?

A. There were about eight or ten that went out on the strike, the rest of them worked.

Q. How long have you been employed as an electrician by the L. & N.?

A. As electrician, I first worked as electrician, I believe it was June 2d, 1942, or June 6th, of '42.)

Q. Did you belong to the electrician's union prior to the 1955 strike, or at the time of that strike?

A. I was one of the first three that joined in New Orleans.

Q. When the union was formed?

A. Organized.

Q. And immediately prior to the 1955 strike, did you hold an official position with the electrician's union here?

A. I was local chairman.

[fol. 64] Q. Did you work during the 1955 strike?

A. I did.

Q. Now, as result of working during the 1955 strike, what has happened to your union membership?

A. I was expelled for life.

Q. Is it not possible for you to rejoin the union?

A. No, I don't think so, not that I know of.

Mr. Eldred: You may ask him.

Cross examination.

By Mr. Kramer:

Q. Did you say you were expelled for life?

A. Yes, sir.

Q. You object to the union shop agreement?

A. I would under that condition, yes.

Q. How would that affect you?

A. Well, now, I don't know the law.

Q. Is it your understanding if there were a union shop agreement, that you would lose your job?

A. I don't know that.

Q. Is it your understanding that you would be—

Mr. Sandidge: Object, your Honor, to this line of questioning, on the ground it is a question of law.

Mr. Kramer: If this man has no understanding of whether he would be affected or not affected by a union shop agreement, I ask that his testimony be stricken.

The Witness: I would be affected.

Q. In what way?

A. In a lot of ways.

Q. How would you be affected?

A. Any man that works there would be affected.

Q. I am asking you what is your understanding of how you would be affected by a union shop agreement?

A. I am asking you now, I would be affected.

[fol. 65]. Q. You answer the questions.

Mr. Sandidge: Your Honor, we are getting no place here.

Mr. Lyman: Your Honor, this man has been brought in as a party to this case. He can be cross-examined as to his theory and the reasons he is urging as a party in the case.

Mr. Sandidge: May it please the Court, I don't know whether a party can be examined on theories of law concerning the case. He can be examined on facts.

By the Court: Mr. Ritter seems to be able to say he doesn't know the law and avoid answering the question about something he knows nothing about.

Mr. Kramer: Might call attention to the fact that Mr. Ritter is Mr. Eldred's witness and not—

By the Court: You don't have to call my attention to that. I have been around the Court a few times and I am able to know who produces a witness and I assume when a party introduces a witness that they are sponsoring that witness to further their presentation of their case.

Mr. Kramer: Objection is being made that this witness doesn't know. I submit if this witness has no understanding of whether he will be affected or not by a union shop agreement, his evidence is entirely irrelevant.

By the Court: Hasn't Mr. Ritter testified that he was a member of the union, that he worked during the strike, and that he was expelled by the union. Now, what else is it, what is it you want to ask him.

Mr. Kramer: I would like to know why he objects to the union shop agreement.

By the Court: Is that important? Hasn't he a right [fol. 66] to object to it?

Mr. Kramer: Yes, but we would like to know on what basis he objects.

By the Court: He has said he was expelled because he worked during the strike.

Mr. Kramer: I believe your Honor knows that under Section 211 of the Railway Labor Act, if membership is denied to him for any reason other than non-payment of dues, he is exempt from the union shop agreement.

By the Court: That's right, what the law provides, but is that important?

Mr. Kramer: I think that shows that he can not possibly be affected by any union shop agreement.

By the Court: What difference does it make? He could still have an objection to it. This is still a free country.

Mr. Kramer: But his objection to something that doesn't affect him can have no relevance.

By the Court: He is an employee.

Mr. Kramer: Yes, but the union shop agreement doesn't affect him if his testimony is true.

Mr. Eldred: That's a question of law, your Honor, and not for this witness to answer.

By the Court: He says he can't answer it. I want you gentlemen to have an opportunity to cross-examine him—I don't want you to feel that I am precluding your examination.

Mr. Kramer: I have no further questions.

The Witness: Your Honor, I may, I will say, I am a Christian, I believe what Christ said when he was asked the first two laws. I believe every bit of it in my heart. That's one objection. I believe in Christ.

By the Court: All right, that's all Mr. Ritter.

[fol. 67] HAROLD JOHNSON was called as a witness by counsel for the plaintiffs, and after having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eldred:

Q. Give your name and address to the reporter.

A. Harold Johnson, 175 Gillette.

Q. Are you employed by the L. & N. now?

A. I am.

Q. As what?

A. As electrician.

Q. Where?

A. Shop 17.

Q. Do you belong to the International Brotherhood of Electrical Workers?

A. I did up until the strike.

Q. How long did you belong to them before the strike?

A. Well, about '45, I guess, when I joined.

Q. And did you work during the 1955 strike?

A. I did.

Q. As result of working during the 1955 strike, what were you told with respect to your union membership?

A. Well, they just throwed me out, that was all.

Q. Did you receive a notice?

A. I believe I did, yes, two of them.

Q. Then did you receive a subsequent notice that you were fined?

A. I did.

Q. Assessed a \$50 fine plus \$16.60 a day for every day you worked during the strike?

A. I did.

Q. Did you pay the fine?

[fol. 68] A. No, sir.

Q. Were you expelled from the union?

A. Yes, sir.

Q. Have not been readmitted?

A. No.

Q. Will you file both of these letters as parts of your testimony and we will mark them Plaintiff's Exhibit 5 and 6.

(Exhibits are so identified and filed in the record.)

Q. Are these the two letters you received?

A. Yes, sir, they are.

Q. How many of the electricians employed during the strike at the roundhouse worked during the strike?

A. All nine of them, that's all there was.

Mr. Eldred: I want to read one portion of this letter of April 20th, 1955, directed to you, and signed by A. L. Schaffner, Recording Secretary—

"As you did not appear April 8th, 1955 before the Executive Board to stand trial for violating Article XXVII Section 20 of the International Brotherhood of Electrical Workers Constitution you were found guilty, and assessed as follows:

"You may not attend Meetings of Local #1353 I.B.E.W. for 2 years.

"You may not hold Office in Local #1353 I.B.E.W. for 5 years.

"You are assessed \$50.00 plus \$16.16 per day from March 14th, 1955 until conclusion of Legal Strike against the Louisville & Nashville Railroad."

I believe that's all.

[fol. 69] Cross examination.

By Mr. Lyman:

Q. Did you appear for trial in those charges?

A. No, sir.

Q. Did you appeal from the assessment of the fine against you?

A. No, sir.

Q. You realize that these exhibits just put in did notify you that you had the right to appeal?

A. Yes.

Q. In other words, you didn't contest the union's right to take this action against you?

A. No.

Mr. Lyman: That's all.

Mr. Sandidge: No questions.

Mr. Eldred: That is all the evidence.

By the Court: You gentlemen want to introduce any testimony?

Mr. Lyman: No, we have no testimony, your Honor. As I indicated before, it is our position that all of the testimony that has come in today is completely irrelevant to the issue before the Court on this motion.

[fol. 70]

IN UNITED STATES DISTRICT COURT**PLAINTIFF'S EXHIBIT No. 1—Filed February 3, 1958****RELEASE**

Whereas, the undersigned are employees of the Louisville & Nashville Railroad Company and are all of the plaintiffs in a certain action entitled O. V. Wright, et al. v. System Federation No. 91, Railway Employees' Department, American Federation of Labor, Louisville & Nashville Railroad Company, et al., now pending in the United States District Court, Western District of Kentucky, at Louisville; and known as action No. 942 in the files of said court; and

Whereas, Counts 1 to 29, inclusive, of the complaint, filed for and in behalf of the undersigned in said action, allege that through and by the acts of the defendants therein, they have been denied certain rights and benefits to which they are and have been entitled under the terms and provisions of certain collective bargaining agreements by and between the L. & N. Railroad and System Federation No. 91, and that the undersigned will continue to be deprived of certain rights and benefits in the future if the defendants are not enjoined from engaging in certain acts and practices, all of which allegations are denied by defendants; and

Whereas, it is the mutual desire of all of the parties to said action to settle and dispose of all issues in dispute among them in the following manner:

- (1) The entering of a consent decree in the aforesaid action, the purpose of which will be to protect the undersigned against any future acts or practices of or by the defendants which will deny to the undersigned any of their rights and benefits under the collective bargaining agreements now in effect or which may hereafter be entered into in accordance with the Railway Labor Act by and between the [fol. 71] L. & N. Railroad Company and System Federation No. 91, a copy of which consent decree is attached hereto.

- (2) The waiver and release by the undersigned of any and all claims which they now have or may hereafter assert against defendants in the above described action for alleged wrongful acts done prior to the date of this release.
- (3) The payment of the sum of \$5000.00 by the defendants to the undersigned.

Now, Therefore, in consideration of the sum of \$5000.00 this day paid to the undersigned by the defendants in the above described action, the receipt of which is hereby acknowledged, and the consent of said defendants to the entry of a decree in said action, a copy of which is attached hereto, the undersigned, for themselves and their executors, administrators and assigns, do hereby release and discharge

System Federation No. 91, Railway Employees' Department, American Federation of Labor,

J. T. Powell, President, System Federation No. 91
J. Hugh Whelchel, Secretary, System Federation No.

91

International Association of Machinists,

R. J. May, General Chairman of International Association of Machinists.

International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America,

P. G. Williams, General Chairman of International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America

[fol. 72] Sheetmetal Workers International Association,
J. Hugh Whelchel, General Chairman of Sheetmetal Workers International Association

Brotherhood Railway Carmen of America,

J. T. Powell, General Chairman of Brotherhood Railway Carmen of America

International Brotherhood of Electrical Workers,

T. H. Patterson, General Chairman of International Brotherhood of Electrical Workers

**International Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers**

Ray Abner, General Chairman of International
Brotherhood of Firemen, Oilers, Helpers, Round-
house and Railway Shop Laborers.

Railroad Lodge No. 205,

International Association of Machinists,

C. A. Babb, President

C. M. Tydings, Secretary

K. Heidel, Treasurer

O. C. Lee, Committee Chairman

H. E. McIntyre, Committeeman

Rufus Goodman, Committeeman

Frank Berger, Committeeman

Local No. 1073,

International Association of Machinists,

M. F. Hodge, President

W. M. Sharpe, Vice President

N. C. Jenkins, Secretary

Lloyd F. Johnson, Treasurer

T. R. Trosper, Committee Chairman

Lesley Gooden, Committeeman

Rein Teague, Committeeman

[fol. 73] **Subordinate Lodge No. 102,**

**International Brotherhood of Boilermakers, Iron Ship
Builders and Helpers of America,**

W. W. Adams, President

James C. Lovelace, Vice President

Russell L. Preston, Secretary

J. C. Brock, Treasurer

R. B. McMasters, Committee Chairman

J. C. Brock, Committeeman

H. A. Stromier, Committeeman

B. C. Elder, Committeeman

J. D. Hall, Committeeman

J. M. Wermuth, Committeeman

Pan American No. 576,

Brotherhood Railway Carmen of America

E. C. Sattich, President

John J. Sillinger, Secretary
Herman H. Fox, Treasurer
W. O. Poteet, Committee Chairman
Daniel DeWeese, Committeeman
W. A. Wilson, Committeeman
Ray Hall, Committeeman

New Bridge Lodge No. 284,
Brotherhood Railway Carmen of America,

H. P. Scrivner, President
Pearl Miller, Vice President
Floyd Neikirk, Secretary
Stone Glass, Treasurer
Thomas Blackwell, Committee Chairman
Pearl Miller, Committeeman
Ollie Richardson, Committeeman

[fol. 74] Local No. 445,
Sheetmetal Workers International Association

William T. Sils, President
Claude McKinnis, Vice President
William A. Schujahn, Secretary
M. Fred Canada, Treasurer
W. R. Denny, Committeeman

Local No. 1004,
International Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers,
Turner Dever, President
John W. Detig, Secretary, Treasurer
G. F. Hutchinson, Committeeman Chairman

Local No. 362,
International Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers,
Edgar Hamblin, President
Ed. Noe, Vice President
Garfield Carroll, Financial Secretary
W. C. Stephens, Recording Secretary
A. M. Jones, Treasurer
W. M. Harmann, Committee Chairman
H. L. Disney, Committeeman
George Broughton, Committeeman

Local Union #1353,
International Brotherhood of Electrical Workers,
T. H. Patterson, President
H. B. Cherry, Vice President
F. C. Doutrick, Treasurer
J. F. Schietinger, Recording Secretary
C. H. Fortenberry, Committee Chairman.
Richard McDaniel, Committeeman

[fol. 75] Louisville & Nashville Railroad Company

from all claims, demands, damages, actions and causes of action whatever, predicated upon any acts, practices or conduct of the above named defendants or any of them which said acts or practices occurred prior to the date of this release, whether such claims, damages, demands, actions or causes of action are enumerated and described in the complaint aforesaid or otherwise.

In Witness Whereof, the undersigned have hereunto set their hands this 1 day of December, 1945.

O. V. Wright

Walter E. Lee

Charles C. Teague

J. W. Watkins

Sherman Napier

Will White

Carl W. Bowman

H. B. Simmons

Chester H. Wallace

C. P. Jacobs

E. L. Crutcher

[fol. 76] Marion A. Holeman

Ollie Keeling

Joe Hibbard

(s) J. A. McDowell
J. A. McDowell

Delbert W. Cloyd

(s) C. D. Walters
C. D. Walters
(s) Elvin Norman
Elvin Norman

W. A. Billingsley

H. F. Starr

W. W. Barnes

L. B. Hines

Malcolm M. Couch

Alf Lockheart

W. D. Ratliff

C. E. Lake

James L. Williams

J. R. Graham

[fol. 77]

IN UNITED STATES DISTRICT COURT
MOTION TO RE-OPEN—Filed February 24, 1958

The plaintiffs and intervenors move the Court to reopen the case for the plaintiffs and the intervenors on the hearing in opposition to the motion of the union defendants to modify the injunction heretofore issued in this case, for the purpose and to the extent only of considering as evidence for said plaintiffs and intervenors the attached copy of a letter, dated February 6, 1958, and written by Jake Paschall, General Chairman of the Brotherhood of Locomotive Firemen and Enginemen, to I. D. Britt, L. A. Dubose and Jack Gunnells, of Birmingham, Alabama.

In support of said motion the Court is advised that at the hearing before the Court on February 3, 1958, there testified for plaintiffs and intervenors, J. C. Laney, H. Carter, Sam Jones and Simon Durant, among others.

One of the defendant unions moving for a modification of the injunction is the International Brotherhood of Firemen, Oilers, Laborers, Roundhouse and Railway Shop Laborers, of which the General Chairman on the L. & N. System is Ray Abner, who was present in the courtroom during the hearing and, in fact, was called to testify as if under cross-examination. On February 5, 1958, General Chairman, Ray Abner, wrote to Jake Paschall, General Chairman of the Brotherhood of Locomotive Firemen and Enginemen, a letter with reference to said hearing and nam-

ing the four witnesses mentioned hereinabove (H. Carter being named as Dave Carter, and Simon Durant being named as Sam Durant). General Chairman Paschall then wrote to the three men at Birmingham named above who apparently have some connection with two of the local lodges at Birmingham, in which he copied the letter from General Chairman, Ray Abner. A copy is attached hereto marked Exhibit "A".

[fol. 78] Both General Chairman, Ray Abner, and General Chairman, Jake Paschall, intimate strongly that J. C. Laney had no business testifying before the Court in this matter on February 3, 1958. As this attitude is part of the same pattern which we have shown to the Court by the evidence adduced or introduced at the hearing, we feel that the Court should be made aware of the fact that such letters are being written with respect to witnesses who testified at the hearing and should consider such letter as part of the evidence in this case.

Marshall P. Eldred, 420 S. Fifth St., Louisville 2, Ky., Attorney for Plaintiffs and Intervenors.

Certificate

I certify that the foregoing Motion was this day served on the defendant unions by mailing true copies thereof to their attorneys, Robert E. Hogan, Kentucky Home Life Building, Louisville, Ky., and Richard R. Layman, 741 National Bank Building, Toledo 4, Ohio, and on the defendant, Louisville & Nashville Railroad Company by mailing a true copy thereof to its attorney, John P. Sandidge, Kentucky Home Life Building, Louisville, Kentucky. This 24 day of February, 1958.

Marshall P. Eldred

[fol. 79]

EXHIBIT A**BROTHERHOOD OF LOCOMOTIVE FIREMEN
AND ENGINEMEN****Louisville and Nashville Railroad System
Office of the General Chairman****404-6 Hoffman Building
Louisville 2, Kentucky****February 6, 1958**

Mr. I. D. Britt, Lodge 937
4253 Greenwood Street
Birmingham 7, Alabama

Mr. L. A. DuBose, Lodge 751
8204—9th Ave., No.
Birmingham 6, Alabama

Mr. Jack Gunnells, Lodge 751
6437—7th Ave., No.
Birmingham 6, Alabama

Dear Sirs and Brothers:

I have the following from General Chairman Ray Abner of the International Brotherhood of Firemen and Oilers under date of February 5, 1958, which is self-explanatory.

"On February 3, 1958 the case of non-operating employees in the Shop Craft Union was in Federal Court on a matter of an Injunction against the Shop Craft Unions which was granted in 1945, and which the Louisville and Nashville Railroad and a number of "scabs" are protesting that said Injunction prevented the negotiation of a Union Shop on the L. & N.

The Louisville and Nashville Railroad and the Attorney, Marshall Eldred, who was representing the [fol. 80] non-union employees, placed some twelve (12) or fourteen (14) witnesses on the Stand in behalf of the L. & N., and the non-union employees, there being some four (4) or five (5) employees from Boyles (Birming-

ham), who testified for these people. Among them was J. C. Laney, Local Chairman and legislative representative of the Brotherhood of Locomotive Engineers, also shop-men Dave Carter, Sam Jones and Sam Durant, all of whom worked during the 1955 Strike with the exception of J. C. Laney, and all of them made statements that they had been mistreated and intimidated with the exception of Laney, who stated that he did not work during the 1955 Strike, but did testify to personally seeing a number of employees performing either acts of intimidation or violence against employees who worked during the 1955 Strike.

This information is being furnished you due to the fact that it is most unusual for an Officer of a nationally recognized Union to appear as a witness in a matter that could not concern his organization. This, for your information."

This information is passed on to you as information in that no doubt our members at Birmingham would be interested to know that Local Chairman Laney appeared as a witness against the non-operating unions under these most unusual circumstances considering the fact that he is an officer of one of the operating unions.

Yours fraternally,

(s) Jake Paschall
General Chairman

JP:nf

cc: Recording Secretaries, Lodges 937 and 751

[fol. 81]

IN UNITED STATES DISTRICT COURT

ORDER SUSTAINING MOTION TO RE-OPEN—April 18, 1958

The motion of plaintiffs and interveners to reopen the case and permit the introduction into evidence on behalf of said plaintiffs and intervenors a letter dated February 6, 1958, from Jake Paschall to I. D. Britt and others is sustained and said letter may be considered in evidence subject to objections of defendants as to relevancy and

competency. The objections on the part of the defendants are hereby noted.

The defendants are directed to serve written notice on the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths; Forgers and Helpers (successor organization to the original defendant, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America) upon them and upon the Local Union defendants as follows:

Railroad Lodge No. 205 (Louisville, Ky.)
International Association of Machinists

Lodge No. 1073 (Corbin, Ky.)
International Association of Machinists

Subordinate Lodge No. 102 (Louisville, Ky.)
International Brotherhood of Boilermakers, Iron Ship

Builders and Helpers of America

Pan American No. 576 (Louisville, Ky.)
Brotherhood Railway Carmen of America,

New Bridge Lodge No. 284 (Ravenna, Ky.)
Brotherhood Railway Carmen of America,

Local No. 445 (Ravenna, Ky.)
Sheetmetal Workers International Association,
[fol. 82] Local No. 1004 (Louisville, Ky.)
International Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers,

Local No. 362 (Corbin, Ky.)
International Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers, and

Local Union No. 1353 (Louisville, Ky.)
International Brotherhood of Electrical Workers, or
their successors,

Which notice shall notify said International Union and said Local Unions of the pendency of the motion to modify the injunction heretofore issued in this case on December 7,

1945. In lieu of serving notice, counsel for the moving defendants may obtain and file herein the written entries of appearance of said International Union and said Local Unions joining in said motion to modify.

Roy M. Shelbourne, United States District Judge.

April 18, 1958.

A Copy: Attest, Martin R. Glenn, Clerk, By Loraine Weller, Deputy Clerk.

[fol. 83]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED—October 10, 1959

Before: McAllister, Martin and Cecil, Circuit Judges.

This cause is argued by Richard R. Lyman for appellants and by Marshall Eldred and John P. Sandidge for appellees, and is submitted to the court.

[fol. 84]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JUDGMENT—December 5, 1959

Appeal from the United States District Court for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Kentucky, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court in this cause be and the same is hereby affirmed.

[fol. 85]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 13,768

SYSTEM FEDERATION No. 91, RAILWAY EMPLOYEES
DEPARTMENT, AFL-CIO, ET AL., Appellants,

—v.—

O. V. WRIGHT, ET AL., Appellees.

Appeal from the United States District Court for the Western District of Kentucky, Louisville Division.

OPINION—December 5, 1959

Before: McAllister, Chief Judge, Martin and Cecil, Circuit Judges.

PER CURIAM:

This is an appeal from an order denying a motion to modify an injunction. The controversy has its roots in bitter disagreements between groups of union and nonunion railroad employees, which originated in disputes arising many years ago; and it also stems from a strike, accompanied by much violence, in 1955, in which a railroad bridge was burned, and certain employees were sentenced to prison terms, for violation of, and conspiracy to violate, the Federal Train Wreck Act. See *Stanley v. United States*, 245 F. 2d 427 (C. A. 6). During the strike, many union and nonunion employees continued to work, the union employees being expelled as a result, and the nonunion employees being threatened with reprisals.

Long prior to the strike, twenty-eight nonunion employees in July, 1945, for themselves and as representatives of all nonunion employees of the Louisville and Nashville System, including approximately twenty-five hundred [fol. 86] such employees, brought an action against the railroad and certain shop craft unions seeking a declaration of rights, and an injunction. On December 7, 1945, the Dis-

trict Court, by consent and agreement of all parties to the action, entered an injunction restraining the lodges and locals of defendant unions from discriminating against the other employees, because of their failure or refusal to join the unions and further enjoining the unions from requiring that the plaintiffs and classes, represented by them, join or retain their membership in the unions as a condition of receiving promotion, leaves of absence, proper protection of seniority rights, overtime work, and any other rights or benefits which might arise out of, or be in accordance with, the regularly adopted bargaining agreements in effect between the railroad and the defendant unions. The unions were also enjoined from denying such employees promotions, pay increases, leaves of absence, seniority protection and the like, because of their failure to join or retain membership in the union. It was further provided in the decree that the District Court would retain control of the action for the purpose of entering such further orders as might be deemed necessary and proper.

Nearly twelve years after the consent decree in which the injunction was entered, the defendant unions and their successors, on July 2, 1957, filed their motion to modify the injunction, by an amendment that it have no prospective application to prohibit the unions from negotiating and enforcing any agreement authorized by an amendment to the Railway Labor Act, enacted subsequent to the entry of the injunction, which permitted the making of union security agreements, and authorized carriers and the bargaining representatives of railroad labor to provide for a union shop, with the requirement that the employees, as a condition to their continued employment, become and remain members of the union.

Answers were filed by the railroad, and on behalf of the nonunion employees, objecting to the granting of the motion to modify the injunction; and testimony was taken in court, disclosing abuse and mistreatment by union members of employees who had worked during the strike, and threats of reprisals in the future when a union shop should come into existence. The District Judge in his opinion, filed after argument of the motion to modify the injunc- [fol. 87] tion, observed that it had been shown, without an

attempt at refutation, that bitterness and hostility, at that time, continued to exist between the union and nonunion employees, and between the unions and their employees who had worked during the 1955 strike.

The District Court held that there was continuing authority in the court to modify the prospective application of the judgment of injunction.

The court further held that, at the time of the issuance of the injunction, the Railway Labor Act made a union shop illegal, so that it was then unnecessary for the railroad and the unions to agree that nonunion members should not then be required to have membership in unions as a condition precedent to employment. When the injunction was issued, the parties therein, by their consent thereto, provided that no such requirement of union membership should thereafter be in effect in any bargaining agreement under the Act. The Amendment of 1951, subsequent to the issuance of the injunction, did no more, the court held, than make negotiations for a union shop permissive, and did not nullify the agreement or the injunction issued. It authorized a union shop by agreement, but did not require it, or require that, as a condition of employment, an employee should join or retain his membership in the bargaining union, or any union. Since, as the court said, the amendment did not require a union shop, the court, under the circumstances of the case, left the parties as they agreed to be, and to remain.

We find no error in the order of the District Court overruling appellants' motion to modify the injunction; and the order is affirmed for the reasons set forth in the opinion of Chief Judge Shelbourne. *Wright et al. v. System Federation No. 91, Railway Employees Department, AFL-CIO et al.*, 165 F. Supp. 443.

[fol. 89]

SUPREME COURT OF THE UNITED STATES**No. 756—October Term, 1959**

**SYSTEM FEDERATION No. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO, et al., Petitioners,**

—v.—**O. V. WRIGHT, et al.**

ORDER ALLOWING CERTIORARI—April 18, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stewart took no part in the consideration or decision of this application.